G. R. S. IX—5]

Previous references 1922-23 (CS)

File No. 225/22

Serial No. 13

Later references

GENERAL AND REVENUE SECRETARIAT.

Serial No. 13

Part B for Aug. 1924

SUBJECT

Copies of judgment in the Poonigali Mango garden rioting Cases.

G. R. S. III-21

1952
1651

General and Revenue Secretariat.

C.B. File No. 225 of 1922.

Serial No.	
13	From The D.I.G. of Police. D.O. No. 2270/23 & 17.6.24 Submits copies of judgments in the Poonjoor mango garden rioting cases and states that the District magistrate, Mysore, considers that there are five cases in which appeals against the order of acquittal should be preferred to the Chief Court and that he would address Govt. in the matter. These copies of judgments were obtained in accordance with the orders of the Second member dated 21st May 1923 in C.B. 225-22/31 2-12. Mr. Krishna Rao has also submitted a note on the judgments. Submitted. 19/6/24. Please find out from L. & L. Secy whether Govt. has accepted the proposal to prefer an appeal as he seems to have stated to the P.P. 20/6/24 It is ascertained that no such reference has been received in the Loc + Leg. Secretariat till now. Submd. 21.6.24 There were two sets of complaints against Mr P. H. Krishna Rao, when he was D.S.P at

Govt called for from Pub. Prosecutor on 21.6.24

NOTE—Contn. sheet.

Serial No.

Remarks. He was about his arresting one Abdul Khader. Abdul Khader's request for permission to prosecute Mr. Krishna Rao has been refused and the Civil suit brought by ~~Mr Krish~~ Abdul Khader against Mr. Krishna Rao is being defended by Govt.

The petition is in respect of the action of the Police in what is described as the Bonigali mango garden rioting case. The petition is a typed one in English and is found in the ~~file~~ connected papers. Memorandum G.O.P.'s No. 2130 of 26.7.23. The main allegation in the petition is that the complainant the wounded person Venkiah, in the case was suppressed by the Police, and a series of false cases pursued.

As the cases were sub judice no action was taken at the time. Judgment has now been pronounced & copies of judgments have been received.

There were 3 Police cases, (196, 215 & 217), and a private counter case

General and Revenue Secretariat. | C.S. File No. 225 of 1922.

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(No 218). ~~The first three~~ The first three
main offences ~~occurring~~
committed are after the theft is
the course of practically ~~the same~~
~~event~~ ~~to~~ are series of occurrences.
No 215 is one simple robbery, see 394
No 217 is one under sec. 143 & No 196 I.P.C.
is under sec 147 & 353 I.P.C
In No 218, the counter case, the complainant was one attempt to murder.

The 1st Pass Mate, Zynu, has disbelieved the Police version & charged & acquitted the accused in the Police case & convicted the accused in the private counter case, one under sec 336 I.P.C & the other under sec 352 I.P.C.

Mr Krishna Rao has sent up a long note criticising the judgments. The ~~Public Prosecutor~~ 1st Mate says that "after visiting the Public Prosecutor" he is "of opinion that the finding of acquittal of the Magistrate was correct beyond doubt". He stated (on 23rd May 1922) that there was

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat. | C.S. File No. 225 of 1922

Serial No.

going to move the Govt to prefer an appeal to the Chief Court. (No such communication has however been received till now).

On going through the judgment & the memo of Mr Krishna Rao, it doesn't appear that there is any complaint against Mr Krishna Rao personally can be substantiated. In case No 45 the Magte remarks that "the Jamadar acted high handedly in arresting certain persons"; in case No. 47 & No. 1 it should have been "backed the active help of the Police". In case No 48 the Magte says that "the handing of the police of the case arising from the serious events showed it not free from attempts at concoction". He also refers to the "interference with which the Police Inspector & Sub Inspector treated the accused" arising which has been sustained". Reports requested in para 29 of the judgment. There are matters for the G. G. P. to take

Secy to Govt to mark all the above matters to be put up

NOTE—Contn. sheet. 2716

G. R. S. III-2]

1952

General and Revenue Secretariat. | CB File No. 225 of 1922.

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are not of. The petr. counsel does not say that the conduct of the subordinate police was determined by the attitude of the D.S.P. The police have based their attitude on the previous magisterial decision regarding the personnel of the Landowners Guard.

It seems to me on the whole that the case, in so far as it relates to the personal conduct of Mr Kanwar Raj, may be closed

(A)

by
27.6
2nd Member

[redacted]

27/6

On going through the judgment of the Dy. C. I am inclined to think that the investigation of this case - particularly that relating to the grievous hurt caused to Ramdeb - was ~~[redacted]~~ rather perfunctory, one should think that the responsibility for this lies to a certain extent on the D.S.P. whose duty it was to guide & direct the subordinate officers engaged in the investigation

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

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important Sarum Case by them.

However as it has been proposed in another connection to remove Mr Hall from the Home Dept, it is unnecessary to take any further action in the present case so far as he is concerned

Sd
20/6/22

Sd
Secretary
21/6/22

I agree with the Hon'ble Member in charge of business in the Judicial Dept

Sd
21/6

Hon'ble Member for Penal Affairs
(File marked put before Hon'ble Member for Penal Affairs)

Sd
21/6

Sd
21/6

Sd
Secretary
21/6

Completed

NOTE—Contn. sheet.

G. R. S. III-2.

General and Revenue Secretariat.

CB File No. 225 of 1922.

Serial No.

In regard to the question of preferring appeals, action has been separately taken & the District Magistrate Mysore informed that Govt see no good grounds for preferring appeals in these cases. These papers are returned to

G. B.
16.8.22
Submitted.
Govt
18.8.22.

383/18.8

and members)

18/8

Seen
18/8

B

NOTE—Contn. sheet.

G. R. S. III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record]

Confidential

CB 165T

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE

C 2270/22

Dated Bangalore 10th April 1924.

Dear Sir,

In continuation of this office D.O. letter No. C 2270/22 of the 29th February about the result of trial of the Poorigali Mango Garden Rioting cases, I write to inform you that the Special 1st Grade Magistrate, Mysore delivered judgment in the three cases Nos. 215, 196 and 217 of 1921-22, acquitting all the accused persons. In a private counter case connected with the same series (C C No 218/21-22) against two accused persons 1 Venkatanarasimha Char and 2 his servant Malla, the same ----- Magistrate convicted both the accused persons, the --- former for an offence under section 338 I.P.C. and the latter under section 352 I.P.C. and sentenced them to 3 months simple imprisonment with a fine of Rs.300/- and to a fine of Rs.60/- respectively.

Copies of the judgment in all the cases have been called for and will be forwarded on receipt.

Submitted with reference. Copies of judgment will be awaited.

Yours sincerely

To

K. Matthan, Esqr., B.A.,
Chief Secretary to the Government of Mysore

N. B.-- Should routine notes be written on small slips, the notes must de copied, or slips pasted on this form.

WD 1880--GPB--1,50 000- 2-5-21

D.o 3688
C.B. 5/6/24

Confdl.

Draft reminder subd.

865 MW
4/6/24

5/6

Dear Sir,

I am desired to invite reference to your D.o. letter No. C.2220/22 dated 11th April 1924 ~~to request that Copies of the judgments about to be delivered in the judgments about to be delivered in the~~ Poorigali Mango Garden Rioting cases ~~and request be supplied when the copies of the judgment may be expected.~~ May be furnished early.

Yours sincerely

G

To

P. T. Bowring Esq.,
D. G. of Police in Mysore

865 MW
4/6/24

CB-1952

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE

Confidential

C 2270/23

Dated Bangalore, the 14th June 1924.

17

CB 225-22-13

Dear Sir,

With reference to your D.O. letter No. 3688/C.B. dated the 5th Current, calling for copies of the judgments in the Poorigali Mango Garden Rioting cases, I enclose herein copies of judgments in C.C.Nos. 196, 215 and 217 of 1921-22, as also copy of judgment (C.C.No. 218 of 21-22) in a private counter case connected with the same series against two accused persons (1) Venkatanarasimha Char & (2) his servant Malla. The Deputy Commissioner & District Magistrate, Mysore, while submitting judgments in the 3 rioting cases, states that the finding of acquittal by the Magistrate is not correct beyond doubt and these are fit cases in which appeals against the orders of acquittal should be preferred to the Hon'ble the Chief Court and that he would address Government in the matter. Copy of his letter with a report from Mr. Krishna Rao, Police

Superintendent

Letter No.R.O.C.1413/23-24 Judl. dated the 23rd May 1924 from the District Magistrate, Mysore District, to the Inspector General of Police in Mysore.

In continuation of my letter No.C.1413/J.23-24 dated the 6th instant, forwarding copies of judgments in the Purigali rioting and daccity cases, I have the honor to state that I have perused the judgments and also the report received from the Public Prosecutor, Mysore Division, who conducted the prosecution.

Agreeing with the Public Prosecutor in the view contained in his report, I am of opinion that the finding of acquittal by the Magistrate is not correct beyond doubt, and I consider that these are fit cases in which appeals should be preferred to the Honourable the Chief Court against the orders of acquittal. Government will accordingly be addressed and necessary sanction obtained for preferrring appeals.

COPY

Bhaman

for Inspector General of Police.

A note on the judgments in Puri ali ploding cases and the counter case on the file of the Special 1st Grade Magistrate

Mysore.

Nos: 216, 217 and 196 are Police cases and No: 218 is a counter case given by one of the accused in Nos: 196 and 217 against the chief prosecution witnesses in the police cases. A perusal of these 4 judgments will show that the magistrate is ~~biased~~ biased in favour of the counter case and has started with a prejudice against the police cases, though the police cases were registered on the 27th and 28th April 1922, no mention of the counter case, was made till 5-6-22 when complaint was actually lodged only on 22-6-22 before the First Class Magistrate, Mysore. The Magistrate, in fact, refers to the Police cases as "counter cases."

In all the 4 judgments, the magistrate has discussed at length the question of title and possession of the garden Survey No: 581 of Purigali village as between Subbata Narasimahchar the chief prosecution witness in the Police cases and 1st accused in the counter case on the one hand and Khasim and Abdul Subhan, the principle accused in the police cases on the other. The following facts are admitted by both the accused and the complainant. But whereas the magistrate has drawn from these facts, inferences favourable to the accused in the police cases, the contention of the prosecution is that such an inference is not warranted by these facts.

Sch 6 29 Q 164 Cr P C Magt may be asked if he has taken steps & prefer an appeal Q

3. This garden was the undivided property of three brothers Subbachari, Puttu Rau and Rangappa. After the death of Subba Chari the garden was hypothecated by his widow Narasamma and his surviving brothers Puttu Rau and Rangappa to Melandur Venkatanarasiah, on 22-11-1897. Again on 6-7-02 the two brothers sold the garden to the same gentleman. Narasamma is not a party to the sale deed but has attested it as a witness. Narasappa however continued to be in possession of the garden till his death in 1918; on 10-12-1915 this Rangappa bequeathed the garden to Narasamma and her daughter Achamma; and on 15-1-16 he executed a registered deed of gift in favour of the same

parties. During the life time of this Rangappa alone, the garden was first mortgaged by Narasamma and Achamma ~~first~~ to Jade Madappa on 5-7-16 and subsequently to S.L.Narayana Rau on 5-10-16. These deeds have been attested by Ranagappa. The garden was sold outright to the same S.L.Narayana Rau on 22-2-17 who sold it to P.Krishnachar on 20-10-19, who in turn sold the Southern half of it on 3-11-19 and the northern half on 12-2-20 to Prosecution witness Venkatanarasimhachar. Thus Venkatanarasimhachar became the owner of the entire garden on 12-2-20. Fourteen days after this i.e., 26-2-20 Yelandur Venkatanarasiah leased the garden to one Aman Ulla Khan. On 10-3-20 Venkatanarasimhachar filed an application for declaration of possession under Sec: 145 C.P.C. as he was obstructed by this Aman Ulla Khan and others; but the application was rejected on 11-3-20 on a Police report that no breach of the Peace was apprehended and also on account of absence of Venkatanarasimhachar. Aman-Ulla Khan and others were also prosecuted for Tresspass into the garden on March 1920 but they were discharged in May 1921 as the Magistrate was of opinion that the possession of the garden was a civil dispute. It is at this juncture that Abdul Subhan is said to have taken the garden from Yelandur Venkatanarasiah as mortgagee with possession. The first mortgage deed now produced though dated 10-6-20 is unregistered. Venkatanarasimhachar again filed an application under Sec: 145 C.P.C. on 1-9-20 and this time it was referred to the First Class Magistrate, French Rocks for further proceedings. The garden was attached in December 1920. Venkatanarasiah was a party to this proceeding under Sec: 145 C.P.C. and he has filed his written statement on 23-12-20 in which he makes no mention of this Abdul Subhan as the mortgagee with possession. On 21-1-21 a registered mortgage deed was executed in favour of Abdul Subhan referring to the previous unregistered mortgage deed of 10-6-20 for a consideration of Rs. 400/- and an additional ~~Consideration~~ of payment of Rs. 50/-. ~~The Amildar~~ The Amildar for this registered deed dated 21-1-21 was appointed receiver after the garden was attached and it was from him that Abdul Subhan

obtained the lease of the crop of the garden for the season 1921. It is in his petition to the 1st Class Magistrate in this connection, that Abdul Subhan first appears on the scene as alleged mortgagee with possession; but even then, though he knew that the garden was under attachment because of proceedings under Sec: 145 C.P.C. he did not apply to the Court to be made a party to the proceedings but was content to get the lease of the garden for the mango season. The proceedings dragged on till December 1921 as Venkatanarasiah avoided appearing in Court on the protext of illness. He was therefore ultimately dispensed with after examining Aman Ulla Khan who was claiming the garden as lessee under this Venkatanarasiah; and final orders were passed on 27-12-21 declaring Venkatanarasimahchar to be in possession of the garden until ousted therefrom in due course of law. The attachment was raised and the Amildar receiver was ordered by the 1st Class Magistrate to put Venkatanarasimahchar in possession. He went to the village on 10-2-22 but as he could not find the parties he ordered the Police Jamedar, Rottikatte, to put Venkatanarasimahchar in possession. This was done on 12-2-22 under a Mahazar and the receipt of Venkatanarasimahchar obtained in the presence of the Patel and Shanbhogue of the village and others, the Patel also undertaking to publish the fact in the village. But the very next day, the servants of Abdul Subhan and his father-in-law Mohamed Khasim of Naripur disturbed the possession of Venkatanarasimahchar who thereupon gave petitions to the Police Jamedar, Inspector, Amildar and the Deputy Commissioner against their high handed act. It is when the Jamedar went on 27-4-22 to satisfy himself about the truth of these petitions and to prevent further acts of high handedness that the incidents forming the subject matter of the Police cases took place.

4. The prosecution contends that on these facts, the possession of the garden by Prosecution witness Venkatanarasiman

char

Venkatanarasimahchar on the day of the occurrence 27-4-20 was undoubted. There is no doubt that Rangappa was in possesion of the garden till his death in 1918,- as the agent of Y. Venkatanarasiah till 1916, when he chose to repudiate the sale deed of 1902 and gifted the garden to Narasamma and Achamma; thereafter in possession as the agent successively of Narasamma and Achamma, Jade Madappa and S.L.Narayanarau. S.L.Narayanarau swears that he next came into possession and that when he sold the garden in his turn to P.Krishnachar, and gave the lease for the season 1920 to Medini Malla and his wife on 20-2-20. The fact of Aman Ulla Khan taking the lease of the same garden from Yelandur Venkatanarasiah six days later (on 26-2-20) and disturbing the possession of Venkata Narasimahchar shows that it was agressive. When Venkatanarasimahchar called in the aid of law, Aman Ulla Khan found himself too weak and the aid of Mohamed Khasim was called in when the possession case was already in Court. The unregistered mortgauge deed of 10-6-20 is a subsequent fabrication and must have been brought into existence only after the garden was attached in December 1920. The date of the registered mortgauge deed in fact marks the time when Mohamed Khasim and his son-in-law Abdul Subhan interested themselves in the case. Mohamed Khasim is a powerful and influential person in Naripur village which is less than a mile from Purigali and is conve niently situated in a different Taluk and District as it belongs to H.Narasipur Taluk of the Mysore District, whereas Purigali belongs to Malavally of the French Rocks Circle. He is thus enabled to commit acts of high-handedness in the Malavally Taluk with greater ease. The extent of his influence in Purigali may be gauged by the fact that the Police found it difficult even to get Mahazari witnesses against him from the village. This man very cleverly kept himself in the back ground when the mortgauge deed was executed in favour of Abdul Subhan, his son-in-law, who lives in Kalkuni a village ten miles off. Mohamed Khasim figures only as the agent of his son-in-law. That the possession of the garden was never

with either Mohamed Khasim or Abdul Subhan is proved beyond doubt, by the fact of their not being made parties to the proceedings under Sec: 145 C.P.C. and Y.Venkatanarasiah not referring to them even in his written statement. They are interlopers subsequent to the date of attachment of the garden and can be considered as having come into temporary possession of the garden only during the mango season of 1921 i.e., from April to June inclusive. The only person that could be considered as in exclusive possession of the garden from December 1920 to February 1922 is the Amildar of Malavally Taluk who was appointed official receiver after the garden was attached by the 1st class magistrate. There is both oral and documentary evidence to prove that on 12-2-22 the garden passed from the possession of the Amildar into that of Venkatanarasimahchar in persuance of the final order of the xxxxxxxx Magistrate dated 21-12-21. That from the very next day Abdul Subhan and Mohamed Khasim with their followers, high-handedly disturbed this lawful possession of Venkata Narasimahchar does not prove their undistrubed possession as sophistically contended by the Magistrate, but their utter defiance of constituted authority. That Mohamed Khasim inspite of the warning given to him by the Rottikatte Jamedar on 10-4-22 and his undertaking that he would not again disturb Venkatanarasimahchar's possession committed the deed on 27-4-22 shows that he was not acting under any bonafide legal right, but with the object of setting at naught the magistrate's order. It was open to him to have recourse to a Court of Law to oust Venkatanarasimahchar if he thought he was aggrieved by the Magistrate's order, but he chose to take the law into his own hands

5 It is surprising under these circumstances, the Magistrate has done some special pleading on behalf of the accused. He holds that the Magistrate's order under Sec: 145 C.P.C. is not binding either on xxxxxxxxxxxxxxxx Venkatanarasiah or on Abdul Subhan who has derived his interest in the garden

from him as Venkatanarasiah had been first made a party to the case but was later on left out on the application of Venkatanarasimachar, as he was applying for adjournments. He relies on I.L.R. 18 Madras 51 to the effect that orders under Sec: 145 C.P.C. are binding only on persons who are actual parties to the case.

6 If the Magistrate thought fit to accept the application of Venkatanarasimachar and proceeded to pass final orders under Sec: 145 C.P.C. it was nevertheless an order declaring Venka anarasimachar in possession and ~~the~~ in pursuance thereof possession was also actually handed over by the Rattikatte Jamedar to Venkatanarasimachar. The order under Section 145 C.P.C. was passed by no less a Magistrate than Mr:M.G. Krishnaswamy Rao who may be credited with some knowledge of law and the present magistrate cannot go behind it, even granting for the sake of arguments that the proceedings were irregular and the order therefore defective. Even the Chief Court does not interfere, on principle, with orders passed under this section and the only remedy even to a party aggrieved by a defective order is to seek redress in a Civil Court or to have the order set aside by the Chief Court, but not to take the law into his own hands. As to Abdul Subhan being made a party to the proceeding, it has already been shown that he had no interest in the garden at the time of instituting the proceeding but acquired it only in January 1921 and it was clearly his duty to apply to the Court to be included as a party when he came to know that proceedings under Sec: 145 C.P.C. were in progress. The Magistrate mistranslates Abdul Subhan's application to the First Class Magistrate on 27-4-21. He has not applied to be made a party to the proceeding and the Magistrate cannot turn the tables on Venkatanarasimachar by stating that no attempt was made to make Abdul Subhan a party to the case. The Magistrate's contention therefore that the order under Sec: 145 C.P.C. is not binding upon either Y.Venkatanarasiah or Abdul Subhan is clearly frivolous and shows a bias in favour

~~xxxxxxxxxxxxxx~~ from the fact that Abdul Subhan got the lease of the mango crop for Rs. 27/- without the crop being sold in public auction to the highest bidder, the inference of the Magistrate that it was not possible to disturb Abdul Subhan's possession is not correct. There is no evidence to show that Abdul Subhan was ever in possession of the garden beyond his own statement in his petition to the Court. The Amildar should have been asked as to why the crop was not sold in public auction. The inference of the Magistrate in the absence of any such question is unwarranted. All the four cases were transferred for trial by one Magistrate so that he may have a connected idea of all the facts in order to arrive at a correct judgment. The Magistrate has pronounced judgments in all the cases on the same day, but he still refuses to take judicial notice in one case of facts in evidence in another. Thus, though it is clearly in evidence that in pursuance of the Court's order the Jamedar handed over possession and Venkatanarasimachar swears that he received possession, the Magistrate refuses to take notice of it in Case No: 213. The Magistrate ignoring this evidence on behalf of the prosecution and refusing to recognise the binding character of the order under Sec: 145 C.P.C. proceeds to discuss the title and possession of Abdul Subhan. The payment of [illegible] by Rangappa on behalf of Venkatanarasiah for this Survey No: for several years before 1918, and the existence of correspondence between Rangappa and Venkatanarasiah between 1897 and 1913 in which Rangappa figures as the agent of Venkatanarasiah, prove nothing as to possession as it is admitted by both the parties that Rangappa was in possession ~~as it is admitted by both the parties that Rangappa was in possession xxxx~~ till 1913. Venkatanarasimachar now contends that when Rangappa chose to repudiate ~~expudite~~ the sale of 1902 to Venkatanarasiah and gifted the garden to Narasamma and Achamma he transferred the possession also to them and as the transfer to S.L.Narayana Rao was also during the lifetime of Rangappa, Narainrao must be presumed to have got possession. Narainrao swears

he got the possession and transferred it to P. Krishnachar who in turn transferred to Venkatanarasimachar. As against this evidence Venkatanarasiah says that he leased the garden after the death of Rangappa to Madi Nanja in 1918 and to Amamullkhan in 1920. These two persons say that it is true that they got the lease; but no lease deed is forthcoming for 1918 and 1919. On the other hand the lease deed executed by Amamulla Khan in 1920 is dated 26-3-20 that is, fourteen days after Venkatanarasimachar bought the garden. The bona-fides of this lease deed are therefore open to doubt. So even considering this evidence the probability is stronger about Venkatanarasimachar getting possession rather than Amamulla Khan or his successor Abdul Subhan, who is said to have got possession from Amamulla Khan when the unregistered mortgage deed was executed on 10-6-20. The Magistrate also falls into error when he states in his judgment that Abdul Subhan was in possession of the garden in 1919 and 1920. It has already been clearly shown that even the unregistered mortgage deed of 10-6-20 is a subsequent concoction, that Abdul Subhan never got possession, except temporarily during the mango season of 1921, and that therefore that he could never be considered as being in possession on the day of occurrence. But still the Magistrate determines that he was in possession on the value of the evidence of Venkatanarasiah, Madi Nanja, Amamulla Khan and Abdul Subhan in preference to that of Narain Rao, Krishnachar, Venkatanarasimachar and Medini Malla. + the Panchayat

8. The Magistrate next goes into the question of title and determines it in favour of Abdul Subhan as Venkatanarasiah paid after Rangappa's death the Kanadayam of the garden for 5 years which was in arrears, and Md: Khasim paid it for 2 years on 27-1-21 and 13-2-22. The fact of the Shanbhogue receiving Kandayam from any person is no conclusive proof of title, much less of possession. The payments by Md: Khasim were respectively after Abdul Subhan had bought this quarrel on 27-1-21 and after Venkatanarasimachar was declared to be in possession on 27-12-21 and had been put in possession on 12-2-22. These 8.

These payments were therefore clearly intended ~~to~~ with the connivance of the Shanbhogue, to create evidence of title and possession in their favour. The Magistrate also chooses to consider, the passing of consideration when Venkatarasimachar bought the garden and records a finding in favour of him. Even the several petitions that Venkatarasimachar gave for his possession being disturbed after 1st - -, the Magistrate construes against him. These acts of high-handedness on the part of Abdul Subhan and Md:Ghouse evoke the Magistrate's admiration rather than condemnation and are made to serve as evidence of possession in Abdul Subhan's favour.

9 As the Police however take their stand firmly on the Magistrate's order under Sec: 145 Cr.P.C. the Magistrate raises a new issue in his last judgment that there is no ~~possession~~ provision in the Cr.P.C. for executing an order under Sec: 145 and lays down the proposition," The delivery made by the Amildar by way of execution of such an order has no legal effect. It has not therefore the effect of ousting a man in possession of the garden". He holds that even the formal delivery on 13-2-22 could not oust Abdul Subhan who was all along in possession even during the period of attachment. Even granting that Abdul Subhan was ever in possession of the garden, the fact of attachment effectively took the possession out of his hands and vested it in the hands of the Amildar as receiver. If he was aggrieved by this order of attachment, he could have applied to be made a party to the proceeding. But he was content to get the lease of the garden temporarily for the mango season 1921. His possession of the garden as lessee of the mango crop was under the Amildar and without prejudice to the Amildar's possession. There was thus no reason to oust him formally before the Amildar transferred his possession to Venkatanara-simachar, as the possession of the accused had automatically ceased when the mango season was over. As to the question ~~of execution of an order under Sec:~~

of execution of an order under Sec: 145 C.P.C., there was no such execution but the Amildar merely transferred his possession to Venkatanarasimachar in pursuance of the Magistrate's order as the attachment was raised and took a formal receipt from Venkatanarasimachar for having received back the garden under a mahazar.

10 It is irreverent to consider the fact of possession before the Magistrate's order under Sec: 145 but even on this point the conclusions of the magistrate are not correct. There is thus no doubt that the magistrate has taken a wrong view of the law in the case and an appeal to the Chief Court is urgently called for. 10

11. Coming to the facts constituting the offences in the three Police charge sheets in C.C.Nos: 215,217 and 196. As a result of the several petitions from Venkatanarasimachar between 13-2-22 and 26-4-22 in respect of his possession of the garden being disturbed by Mohamed Khasim and Abdul Subhan and their followers, the Rottikatte Jamedar went to the garden with some constables and panchayetdars on 27-4-22 and found one Kazid and Kala and Malla, the servants of Mohamed Kasim and Abdul Subhan barring the entrance of Venkatanarasimachar into the garden. The Jamedar told them that they were wrong in obstructing, as the possession of the garden had been handed over to Venkatanarasimachar. But they refused to budge without the order of their masters. When Venkatanarasimachar went to open the gate which was locked with his own lock, he was pushed aside by these three accused and restrained from entering the garden. The Jamedar thereupon arrested the three and kept them aside permitting Venkatanarasimachar to enter the garden with his servants. This offence of wrongful restraint is the subject matter of C.C.No: 215. After this arrest Mohamed Kasim came with a no: of followers numbering more than thirty, forcibly entered the garden in spite of the waring of the Jamedar and drove away Venkatanarasimachar and his servants and surrounded and intimated the Jamedar, from doing his lawful duty. The crowd did not disperse until the Jamedar, finding the situation beyond his control, sent an urgent message to the Police Inspector at Malavally to come with additional help. The crowd then dispersed with the threat " you do what you can; we will do what we can. Let us see if the Iyengar will get any mangoes." This incident is the subject matter of C.C. 217.

12. In accordance with the Jamedar's message the Police Inspector Mr: Bhujangarao left Malavally with the Sub Inspector Neelakantarao and half a dozen constables armed with guns. They met Rottikatte Jamedar going to Boppagowdanapura with

the arrested accused, learnt the events of the evening from him and camped in the School Building at Purigali for the night. The complainant also gave an account of the afternoon's incidents. At 11 O'clock in the night, the complainant saw from a distance a number of people moving about in the garden with torches and lanterns. He reported the matter to the Inspector who gave him the help of some constables, himself promising to follow after dressing himself. The party of the complainant and his servants and the constables devided themselves into two parties after coming to the garden in order to go in different directions and scare away the accused in the garden who were too numerous for being caught. The constables therefore blew their whistles which had the desired effect of making the accused run pell-mell in all directions The complainant and his party found accused Peersab, Shookoor and Kajji escaping from the garden through a gap in the hedge, Kajji carrying a gunny bag containing mangoes and Peer Sab carrying the mangoes in his "Dupaty". The complainant tried to catch hold of them running in advance of his party but was beaten with clubs which the accused were carrying. He has received contusions on the right thigh, the right forearm and the left hand. The complainant himself was carrying a loaded gun and he says that in the struggle a blow from a club fell on the trigger and the gun went off injuring accused Peer Sab in the left thigh. PeerSab fell down; the other accused ran away; the party that was following the complainant came up, saw the situation and ran back to the Inspector with the complainant to give information to the Inspector. They met the Inspector and the Sub Inspector on the way and came back with them, but found to their surprise that Peer Sab had disappeared. The Inspector attempted a mahazar as to the state of affairs and sat down near the place where the struggle had taken place with panchayetdars. But before they had written a few lines stones began to be pelted at them so that they had to run away leaving the Mahazar unfinished. Next morning, a fresh mahazar was written

for the existence of a bag of mangoes, some clubs, some loose mangoes and blood marks at the scene of the struggle, the incident of the night was registered under Sections 147 and 381 I.P.C. - the subject matter of C.C. 196; and after enquiry the injured Peersab was found in Naripur in the house of Chinnayya, the brother of Mohamed Kasim. Peersab was unable, or pretended to be unable, to talk and Chinniayya refused to send him with the Police for treatment. The Inspector therefore wrote a Yadi to the Sub Assistant Surgeon at T.Narasipur, where they promised to take Peersab for treatment, requesting him to let him know his progress.

13. As against these Police cases, this injured Peersab has filed a counter complaint. The origin of this counter complaint is first found in the petition of Md:Khasim to the D.S.P. French Rocks on 30-4-22 in which he pretends that he was absent from the village, and from the scene of occurrence on 27-4-22; but that he learnt, that on that day, his servant Peersab, who was keeping watch at the garden was shot by V.N.char. Peersab himself gave his first statement before the Amildar T.Narasipur on 5-5-22 in accordance with Mohamed Kasim's petition. It is a vague statement in which names of witnesses are advisedly ommitted. When accused Abdul Subhan was arrested in Mysore, among the papers found in his possession was a chit which contains advice to Peersab not to give a statement until properly instructed. The complaint of Peersab itself was filed on 22-6-22 long after the Police charge sheets were placed; and was registered as C.C. 218. According to this counter complaint, it was not Mazid, Kala and Mala that were keeping watch at the garden, but Mazid and the injured Peersab. Venkatanarasimachar came with his followers, backed by the Jamedar and his retinue, in the evening of 27-4-22 and wanted to forcibly enter the garden. Peersab alone obstructed the entry, whereupon he was dragged to a side by Medini Mallan, a servant of Venkatanarasimachar. Accused Peersab, another servant of Venkatanarasimachar tried to cut down, the bar of the gate with an axe, but as complainant Peersab interceded, he received the blow of the axe on his

head and began to abuse Venkatanarasimachar who thereupon fired at him the gun that he was carrying and injured him in the thigh. Mazid did not see the first part of the incident as he was on the other side of the garden, but came in time to see Venkatanarasimachar fire the gun. Venkatanarasimachar is said to have become repentant immediately for what he had done and implored the Jamedar to save him. The Jamedar byked away immediately saying that he would bring the Inspector. This counter case, therefore combines the two incidents of the afternoon giving them, at the same time, a twist favourable to the accused and gives the direct lie to the night incident, transferring as it does, the shooting incident to the evening alone. No theft or rioting is alleged to have been contemplated or committed in the night.

14 The Magistrate had thus before him, two opposite versions of the case, supported by two different sets of witnesses and he had to arrive at the truth. But he has not tackled the evidence in any serious vein and has left the question practically undecided, concerning himself mainly with the civil rights of title and possession which have been discussed at length in the first part of this note. He holds that the possession of the garden was with accused Mohamed Kasim and Abdul Subhan and that therefore their servants Mazid, Kala and Malla were justified in resisting by force the entry of Venkatanarasimachar, as they were acting under the bonafide belief of legal right and in the exercise of the right of Private defence of property, and there is no offence of wrongful restraint made out in C.C. No. 215. For the same reasons and in the absence of the offence of wrongful restraint, there is no offence under Sec. 143 in C.C. 217. And again for the same reasons, as he holds that the dishonest intention on the part of the accused is not made out, there can be no offence of theft, and therefore no offence of rioting in C.C. 196. He therefore acquits the accused in all the three Police cases on the plea of right of private defence of property. It is to be noted that this plea has not been set

up by the accused themselves whoLon the other hand plead alibi and have examined a number of defence witnesses in support thereof. The Magistrate has disbelieved this plea of alibi in all the three police cases characterising the defence evidence as unconvincing, indefinite and bad in quality. The Magistrate must therefore be presumed to believe the prosecution evidence, though he does not say so definitely nor does he say, that he does not believe the evidence though he has referred to the relation between the prosecution witnesses and the complainant on the one hand and the accused on the other. He has given no reasons for disbelieving the evidence of Police Officers and men on the ground of interestedness, though there is no evidence to show any interestedness on their part. He has not in fact recorded a definite finding on these points but chooses to rely on the question of possession which he raises. For acquitting the accused on a plea different from that raised by them, he relies on 19 Mysore Chief Court's Report 231 to the effect that where there is evidence on record which can support a plea of right of private defence the Court should not ignore it, but should give effect to it, even though it is not pleaded and the accused set up a different defence. But the fact remains that the Prosecution evidence in these cases is not challenged.

/5 But when the magistrate comes to consider the evidence in the counter case, he calls in question the bonafides of the police, and says that their conduct is suspicious and there have been attempts at connection. But there is absolutely no foundation for this charge against the police except in the confused head of the magistrate as will be apparent shortly. It is not denied by any witness, that when the Mahazar was drawn by the Inspector at the scene of the occurrence some lose mangoes, a bag with mangoes, some clubs and blood marks were found there. Even the mahazar witness admits this but proceeds to say that two or three other bags containing mangoes were brought to the place of Mahazar. From this the magistrate jumps to the conclusion that the conduct of the

police was suspicious and there were attempts at concoction. The Police Officers do not deny that such bags as were lying about in other portions of the garden were brought and it is difficult to imagine why the police should concoct this piece of worthless evidence. It only shows the anxiety of the magistrate to damn the police in order to favour the accused.

16 All the evidence adduced by the prosecution in this counter case goes to show that no less than eight witnesses saw Venkatanarasimachar fire his gun at Peersab in the evening of 27-4-22 in the presence of the Rottikatte Jamedar. The Magistrate does not believe this evidence in toto. He is wavering between believing the night incident and the evening incident, and finally comes to the conclusion that in his view Peersab was shot in the evening at about the time of sunset after the Jamedar had left the place. The last portion of this finding shows that the witnesses are speaking a lie, in the opinion of the magistrate, when they say that the Jamedar was present. The prosecution version also is that the Jamedar was present during the firing and he left the place in a hurry to bring the Inspector after Venkatanarasimachar implored the Jamedar to be saved. The finding and the evidence are thus inconsistent. He should perhaps have had merely said, as he has stated in the earlier portion of his judgment "It is very difficult to fix the precise time of the act or the exact circumstances under which that act was done. Viz: whether the act was done in the evening, in the presence of the Police Jamedar Lingaraj Urs; or whether as per first accused and the police version it was done in the night". The arguments of the magistrate for believing that it was not done in the night are curious. He says that, judging from the previous conduct of Md:Kasim, Abdul Subhan and their followers, it is not likely that they did this act by night, stealthily, because "the accused do not seem to have been wanting in

men of courage to openly cut and remove the crop; they have more than once set at defiance police warning in the matter" It is certainly not the contention of the Prosecution that the incident of the night was a stealthy act. It was one more act of defiance in pursuance of the threat in the evening, "Let us see if ~~xxx~~ Iyengar will get any mangoes, we will do what we can." The Magistrate has also not given any reason as to why the Police Inspector should side Venkatanarasimachar and manufacture this elaborate case ~~of the case~~ of the night. The Magistrate infers the partiality of the Police from their not registering the complaint of the injured Peersab and investigating into their alleged indifference to his progress in the hospital. Both these alleged facts are not true. The Inspector, Sub Inspector and Jamedar went to Naripur the very next day, but Peersab was not in a position to give a statement. They did the best they could in sending him for treatment to Narasipur hospital, and the Inspector was also getting information about his progress. He also sent Kottikalu Jamedar to ascertain his progress. When Peersab gave a statement before Narasipur Amildar, on 2-5-22 to the effect that it was he that was keeping watch at the garden on the evening of 27-4-22, and the shooting too was in the evening, the complaint was patently false to the personal knowledge of the Jamedar, the Sub Inspector and the Inspector and none of them could be justified in registering such a case. There is another circumstance which proves beyond doubt the truth of the night incident. On the Inspector sending up a report of the facts including his running away on stones being pelted, his conduct was reported to the Inspector General of Police and he was kept under suspension for cowardice. This report of the Inspector was sent immediately after the occurrence and it is not likely that he would make a false statement which he knew would affect his prospects, even granting that he wanted to side Venkatanarasimachar or want to take out a false case against the accused. But even this State

statement is disbelieved by the magistrate for no apparent reason.

17 I am not concerned about the conviction of Venkata Narasimachar in a private case except that the private case is a false counter case to the police cases. Seeing that the Magistrate had doubts about the time of occurrence and about the Jamedar being present during the shooting he should have disbelieved the prosecution witnesses in this case and given the benefit of doubt at least to the accused; and considering that there is no reason to disbelieve the evidence of Police Officers, as discussed above, he should have found the accused not guilty and acquitted him. But the magistrate is at great pains to show that there was neither justification nor accident in the shooting. That he has been of a wavering mind throughout the trial of the case, according to the shifting nature of the evidence, is clear from the fact that the complaint was under Sec: 307; that the accused was ~~convicted~~ charged under Sec: 326 and finally convicted under Sec: 338. I may be pardoned, if under the circumstances I am of opinion that the judgment appears to be vindictive, with some ulterior object in view.

18. In conclusion, I must state that the ~~plea~~ peace of the country round about Purigali depends upon the result of these cases. Though under the law, we were precluded from giving evidence of acts of high handedness and tyranny on the part of this Md: Kasim and his gang at Naripur, there is no doubt that he is a local tyrant and there is no security either to property or honour of the villagers round about. His defiant attitude reached its climax in his setting at nought the Magistrate's order under Sec: 145 and ignoring police warnings and taking the law into his own hands. These cases were therefore launched in the interests of peace and justice and it was with that end in view, that a force of Special Reserve Constables was stationed at Purigali for one full year and the services of the Public Prosecutor were engaged for the 18

conduct of the cases. I regret to state, that the Magistrate has not realised his responsibility for the maintenance of law and order in his jurisdiction and has unscrupulously condemned the Police to gain his own ends. He seems to have been guided more by the quantity than the quality of evidence which is a direct indication of the local influence of Mohd: Kasim. While the Police found it difficult to get persons even to witness a mahazar, he has produced witnesses by the dozen to support the false plea of alibi in the Police cases and the false case against Venkatanarasimachar. Unless his evil influence is destroyed by convicting him in these police cases, there can be no peace or security. The first fruits of his acquittal are already evident in that poor Venkatanarasimachar has been badly beaten by Mohamed Kasim's brother and his followers, and the case is going on in the Pavagada Court.

19. As I am of opinion that these are fit cases to go in appeal to the Chief Court, both on the facts and the law, I request the Government may kindly be addressed to prefer an appeal in these cases.

12-6-24

Dt: Superintendent of Police
Tumkur District.

In the court of the Special 1st Class Magistrate, Mysore.

Dated this 31st day of March 1924.

Present:- S.Krishna Rao,Esquire.,B.A.,B.L.,

Special 1st Class Magistrate.

Criminal Case No. 215 of 1921-22.

Complainant.

Government of Mysore.

Accused.

1. Mahomed Khasim Sab
2. Abdul Subhan.
3. Abdul Kazid.
4. Kala bin Lingu.
5. Malla bin Lingu

Judgment.

This is a case of wrongful ~~restraint~~. This case(C.C.No.215 of 1921-22) and two other connected cases(C.C.Nos.217 and 196 /21-22) and the counter case (C.C.No. 18 of 1921-22) arise out of a dispute in respect of a Mango garden bearing S.No.581 and situated in Purigali village,in Malavalli Taluk, between one Venkata Narasimha Char on the one ~~xxx~~ hand and Abdul Subhan(2nd accused) on the other.

2. It is admitted on both sides that the garden originally belonged to the family of 3 brothers by name Subba Chari,Venkata Narasiah alias Puttu Rao and Rangappa. The first of them predeceased the other brothers without male issue,leaving behind him,a widow by name Narasamma and a daughter by name Achamma. Some time after the death of Subba Chari i.e. on 22-11-1897,his two brothers and and widow (Narasamma) hypothicated the garden, a house,and a few other lands situated at Purigali for Rs.4700/- to one Venkatnarsiah of Yelandur, and executed the hypothication ~~xxx~~ bond(vide application copy Ex.D/26) in his favour,and on 6-7-1903 the two brothers sold all those ~~items~~ of property to him, and executed in his favor the sale deed,certified copy of which is marked as Ex.D/25. It may be noted that the widow Narasamma has attested the sale deed,and that in

in the hypothication ~~dxx~~ bond, the lands, the garden and the house ~~are~~ characterised as the ancestral property of the brothers. On 10-8-1920 1.Venkata Narasiah mortgaged the garden for Rs.400/- to Abdul Subhan(2nd accused) and executed in his favour the mortgage deed Ex.D/14. The mortgage deed is not registered. It is said that this was due to the subsequent ill-ness of the mortgager. On 26-1-1921 he borrowed again Rs.50/- from Abdul Subhan and executed in his favour the mortgage deed, Ex.P/17 which has been duly registere

3. Venkata Narasimha Char examined as P.W.1, admits that the garden belonged to Rangappa. He does not say how he got it. In th ~~xxxx~~ course of cross examination, he states that he bought the garden from Narayan Rao. But he does not say how the ownership to the garden passed from Rangappa to Narayan Rao. It is evident that he is aware of ~~xxxxxx~~ his defective title and he does not therefore disclose the course of his title precisely. He also admits that Abdul Subhan(2nd accused) has been paying its assessment for the past 2 or 3 years. He does not say that he paid its assessement. He says that his offer was refused by Shanbhogue in 1921. This allegation is not proved. His ~~xxxxxxxx~~ statement that Narayan Rao paid its assessment in 1919 and 1920, is also not proved, ~~even~~ Narainra is not called as a witness. Ex.P/11 which purports to be a registered mortgage deed executed by Narasamma and Acharma in favor of Jademadapp, is produced in the case. It is not clear why it is produced. Jade Madappa is not called as a witness.

4. P.W.5, who is a coolie, states that he has been watching the garden for several ~~xxxxxxxx~~ purchasers successively. It is not made clear who those purchasers, are. P.W.7 who is another witness of the same type, says that he had taken lease of the mango crop of the garden from P.W.1, about 1½ months after 'Mudukathore Jatre'. But he confesses that he was not even allowed to watch the garden. The meagree evidence of these ~~xxxxxx~~ 2 persons does not establish the possessio of P.W.1.

5. In order to prove the P.W.1's possession of the garden, reliance is placed therefore on an order(Ex.P/7) made by the Ex-offic

Ex-officio 1st Class Magistrate of Pronah Rocks under section 145 Cr.P.C. declaring that P.W.1 had been in possession of the garden, and forbidding all disturbance to it until evicted in due course of law. The order is dated 27-12-1921. The Magistrate had also attached the garden in the case and withdrew the attachment when he passed final order on it in favor of P.W.1. He also communicated the final order in the case and the withdrawal of attachment to the Amildar of Malavalli, who had been appointed as receiver of the garden during the period of its attachment. The order sheet in that case (marked as Ex.D/2) shows that Y.Venkata Narasiah had been made a party to that case, that as he once or twice applied for adjournment on account of ill-ness (vide entry Ex.D/35 in the order sheet), P.W.1 made an application to court stating that he would give up Y.Venkata Narasiah, and that the latter's name may be scored out of the record. His name was accordingly struck out of the record by the court, and the case was proceeded against the remaining parties. The subsequent order made in the case is therefore not binding on him or on the 2nd accused, who has derived his interest in the garden from him. It was contended on behalf of the prosecution that the order is nevertheless binding on both of them on the authority of decision of the Bombay High Court reported in 11 Bombay L.R.377. In that case Chandavarkar Judge, ruled that an order made under section 145 Cr.P.C. is binding not only on the parties to the case but on those who had the knowledge of the proceeding. But there is also the ruling of Best Judge, of Madras High Court, in a case reported in Indian Law Report 18 Madras 51, to the effect that orders under section 145 Cr.P.C. are binding only on persons who are actual parties to the case. Beaton, Judge, did not accord his consent to the proposition laid by Chandavarkar, Judge in the Bombay case. That learned Judge preferred to dispose of that case on another technical point. Further the opinion of Chandavarkar J. not apply to the circumstances of the present case, where the order under section 145 is sought to be made binding on one who had once been a party to the case in which it was made, but scored out deliberately on the application of the

opposite

opposite party. No attempt has been made to make 2nd accused a party to the case, though his claim to the possession of garden was known to P.W.1. So the order made under section 145 in the case referred to above, is not binding on the 2nd accused or Y.Venkata Narasiah. Nor can the order be taken as proof of actual possession of P.W.1, as against 2nd accused or Y.Venkata Narasiah.

8. The evidence given by Avildar of Malavalli, Mr. Arunachela Mudaliar (P.W.9) shows that he had been appointed as receiver of the garden while it was under attachment, and that during that period, the 2nd accused presented a petition to the Ex-officio 1st Class Magistra of French Rocks, alleging that he was mortgagee in possessio of the garden, and complaining that the attachment was made behind his back without making him a party, and requesting that as he has been in possession of the garden, he may be allowed to take its crop and deposit 25/- rupees as its value in court, and that his application was granted and he was permitted to take the crop accordingly. That the crop was not sold in public auction to the highest bidder as is usual in such cases and the 2nd accused was permitted to take the crop by depositing 25/- rupees as its normal value, shows that it was not possible to disturb his possession, merely on the ground that the garden had been attached in a proceeding to which he was not a party. The fact that Y.Venkata Narasiah did not mention in the written statement (Ex. P/12) filed by him in that case, the name of 2nd accused as mortgagee from him, does not affect the right of the 2nd accused.

7. The Avildar further says that after the Ex-officio 1st Class Magistrate, communicated to him the final order in the case and the removal of attachment, he gave order to the Jamedar of Rottikatte to deliver possession of the garden to P.W.1, and that he received from the Jamedar a report of having delivered the garden to P.W.1. But neither the Jamedar nor P.W.1 speak to this delivery. So there is neither satisfactory proof of P.W.1's possession or title to the garden.

8. On the other hand, there is some evidence reliable evidence to prove the 2nd accused's mortgage and possession in respect of the

the garden. Y.Venkata Narasiah examined as D.W.8 speaks of his purchase of the garden from Rangappa and Puttu Rao. He says that he produced the original sale deed and a prior hypothication which they both and their brother's widow Narasamma had executed in his favor before one Guriviah, who was Police Jamedar of Rottekatte in connection with a complaint lodged before him by P.W.1 against him(the witness) and others, for trespass on the garden in March 1939, and obtained acknowledgment Ex.D/22(a) endorsed on a copy(Ex.D/22) of those documents made and returned by him at the time. Ex.D/22 is a reply received by him from the District Magistrate, with reference to his application to his record room for the return of the original documents. This reply is to the effect that those documents were not in the record of the case which had been instituted by the Police against Y.Venkata Narasiah(D.W.8) and others for trespass on the garden in the court of the Special 2nd Class Magistrate of Mandya. The witness states that after purchasing the garden, from Rangappa and his brother Puttu Rao, he had left it and his other lands in the management of Rangappa, who was residing in Purigali, because he(the witness was then employed at Yelandur in Jahgiri office as Head Gumastha and could not therefore frequently go to Purigali to look after the garden or his other lands. He has produced letters Exs.D/23 to D/33 written by Rangappa to him in regard to the details of his management of the lands and garden, the state of their crop and their disposal. D.W.1 and 3 also speak of Rangappa's management of the garden on behalf of D.W.8. This accounts for the payment by Rangappa of the assessment of the garden and of his other lands. D.W.2, who is the Shanbhogue of Purigali, has spoken about the payment of assessment by Rangappa for Narasamma's Khata to which the garden is still attached and produced Khata and Khirdi books to show them. The entries relating to these payments, are made therein. It is un-necessary to refer to these entries as the payments of assessment by Rangappa for the garden is admitted by both sides. The entries Exs.D/10 and D/11 in Khata and Khirdi books respectively of the year Khridhi, shows that the Kandayam of

the

the garden was paid by Maridevaru(a tenant of D.W.8) on 25-2-1906. The entry Ex.D/12 in Katcha book,which is in the writing of the ---- Shanbhogue,shows that D.W.8(Y.Venkata Narasiah)paid after Rangappa's death,the amount of assessment of the garden,which had fallen into arrears for 5 years. He also speaks of the assessment of the garden paid by Abdul Subhan(2nd accused). Ex.D/13 is the receipt given to the latter by the former. The Shanbhogue also says that on behalf of Abdul Subhan,his father-in-law Mahomed Khasim(3rd accused) paid assessment of the garden to his hands,and obtained from him the receip receipts Exs.D/15 and D/16,which are dated 27-1-1922 and 13-2-1922 respectively. He states that as for other receipts granted to Abdul Subhan,he has spoken about them in the connected case C.C.No.196 of 1921-22,where they have been filed. Ex.D/4 which is also marked again by mistake as D/36,and which is a copy of order in C.C.No.224 of 1919-20 on the file of the Special 2nd class Magistrate of Mandya, shows that on 2-3-1920 the Police instituted,owing to the complainant of P.W.1,a case of criminal trespas on the garden in question, as against, Y.venkata Narasiah,his servant Madi Nanja(D.W.4) who was watching the garden on his behalf,and his tenant in possession of the garden,Amanulla Khan,and that the case ended on =2-4-1921 in dis- charge of those persons. D.W.8 swears that after Rangappas death he had appointed Madi Nanja(D.W.4) for 2 years to watch the garden,and that afterwards he leased it out to Amanullakhan. He is corroborated on this point by Madi Nanja(D.W.4). Abdul Subhan(2nd accused) who was acquitted at an early stage of this case for want of any evudence against him,is examined as D.W.7. His evidence shows that he obtained mortgage of the garden under deeds Exs.D/14 and D/17,the former ~~of which~~ which is written by D.W.2,that he has been in possession of the garden and paid its assessment as per receipts Exs.D/13 to D/16 either personally or through his father-in-law Mahomed Kasim (1st accused) who lived closer to the garden,that he had appointed Abdul Mazid(3rd accused) and Peer Sab to watch the garden on his behalf,that after he heard of the occurrence in which his servant Peer Sab,received a gun-shot-wound,he went to Mysore to present a

complaint

complaint to Deputy Commissioner, that he was arrested near the Deputy Commissioner's office by the Superintendent of Police of Rocks, and that the complaint was thereafter presented on his behalf by a Pleader. That complaint is Ex.P/18 and the Vakalat attached to it is Ex.P/19. The prosecution has adduced no evidence worth the name to prove Venkata Narasimhachar's possession of the garden or that of his predecessors in title. His predecessors in title are not even called as witnesses in this case. Nor has the prosecution produced any other oral evidence or vouchers to show payment of assessment of the garden by any of them. So I have to say that it is not at all satisfactorily proved that P.W.1 was in possession of the garden, and that on the other hand the evidence on record points to Abdul Subhan's possession of it at the time of, and for some years previous to the occurrence. The evidence given by P.W.1 as to the various events which occurred on 13-2-1922, 10-4-1922, 13-4-1922, 14-4-1922 and 25-4-1922, and which necessitated his numerous petitions (Ex.P/1 to P/5) to various Executive authorities for help to enable him to enter or secure possession of the garden, is a clear confession, that he never succeeded in getting actual possession of it.

9. As to the occurrence on the morning of 27-4-22 which is the subject of enquiry in this case, P.W.1 says that when he went to open the garden gate in the Police Jamedar and some Police Constables, who had come to help him, he was obstructed by Abdul Wazid (3rd accused) who told him that he had orders from his masters viz. accused numbers 1 and 2, not to allow him to enter the garden, that shortly afterwards two others (accused Nos.2 and 5) joined him, in resisting his entry into the garden, that he then attempted 'to clear him' from the gate but was pushed away by him, that he then appealed to the Jamedar who also on questioning them got the same reply, that the Jamedar after wards arrested the accused numbers 3 to 5, and that he (P.W.1) then opened the lock of the garden gate and went in with his servants. He adds that shortly afterwards while they were in the garden, some men rushed into it and he with his followers came away from

from the garden and found near the gate accused Nos.1 and 2. What happened at this juncture forms the subject matter of enquiry in C.C. 217 of ~~1922~~ 1921-22. P.W.2 to 7 are called to corroborate P.W.1. P.W.4 has given very hazy evidence and did not identify the accused. He was said to be hostile. P.W.2 does not say that he saw the 2nd accused that day. P.W.5 states that he did not see accused numbers 1 & 2 at all that day. P.W.6 is ~~a~~ Police ~~Constable~~ Jamedar. P.W.2 is a Police Constable, who had been deputed 15 days before to be with P.W.1, to enable him to take care of the garden. P.W.3 is a Constable who had gone with the Jamedar to the place. P.W.5 and 7 are the servants of P.W.1. P.W.5 does not say that accused 3 to 5 pushed P.W.1. He says that ~~xxxx~~ they only obstructed P.W.1.

10. As there was no sort of evidence against the accused Nos. 1 and 2, they were acquitted as soon as the case for prosecution was ele closed. The other accused were allowed to adduce their evidence. D.W.5 speaks of the arrest of the accused Nos.3 to 5 near the garden ~~x~~ the absence of accused numbers 1 and 2 then at that place. D.W.6 says that 4th accused was arrested some where else. I am not prepared to attach much weight to their evidence. I have already referred to the evidence of the other defence witnesses.

11. The evidence discussed above, shows how weak the title of P.W.1 in respect of the garden in dispute is as compared with that of Y.Venkata Narasiah, and with the interest which 2nd accused has derived from the former as mortgagee. I make this observation though it is not for this court to adjudicate upon title, only to show that there was good ground for Abdul Subhan(2nd accused) and his men to believe, that he had a right to the possession of the garden as mortgagee, and that if under that bonafide belief, he and his servants resisted and prevented the entry of P.W.1 into the garden, or even pushed him away if he showed a determination to enter the garden in spite of the resistance, they have not committed any offence. As the evidence on record shows that the garden was in 2nd accused's possession, I think that Jamedar acted high-handedly ~~by~~ in the arrest of the accused accused numbers 3 to 5, when they were ~~in~~ preventing the entry of

P.W.1

of PW.1 into the garden and acting to all appearance in defending t
their master's possession while the title of P.W.1 was apparently defecti
and he had not in any way secured actual possession of it. I have
to say un-hesitatingly that the evidence on record, does not at all
establish the offence of wrongful restraint or any other offence
against any of the accused. They are therefore acquitted under
section 245 Cr.P.C.

Pronounced in open court,

Sd/- S.Krishna Rao,

Special 1st Class Magistrate.
31/3/1924.

N o t e. Though this is a summons case warrant case procedure
was adopted as it had been so commenced and proceeded with by my
predecessor.

Sd/- S.Krishna Rao,

Special 1st Class Magistrate,

M y s o r e.

Copy
S. Krishna Rao
Special I Class
Magistrate, Mysore

Criminal Case No. 215 of 1921-22.

The following witnesses were examined for the prosecution:-

1. Venkata Narasimha Char 2. Wada 3.Linga 4.Gurumallaiya 5.Wedini Walla 6.Linga Raj Urs 7. Peer Sabi 8. Mr.Arunachella Mudaliar.

For Defence:-

1. Narasaiya alia Kusappa 2. Lakshminarnappa 3. Subbe Gowda 4. Madinanja 5. Adam Sab 6. Nanja 7. Abdul Subhan 8. Venkata Narasaiya.

The following exhibits were filed for the prosecution:-

Ex.P/1. Petition dated 13-2-1922 by Venkata Narasimha Char to the Amildar, Malavalli.

Ex.P/2. Petition dated 31-3-1922 by ditto- ditto.

Ex.P/2a. Malavalli Taluk Amildar's memo dated 3-4-1922 forwarding Ex.P/2 to the Police Jamedar, Rottikatte Range.

Ex.P/3. Petition dated 7-4-22 by Venkata Narasimha Char, to the Taluk Police Jamedar, ~~Rottikatte Range~~. Malavalli.

Ex.P4. Petition dated 12-4-22 by Venkata Narasimhachar to the Police Jamedar Rottekatte Range

Ex.P/5. Petition dated 25-4-22 by ditto- ditto.

Ex.P/6. Statement dated 10-4-22 of Md. Khassim, son of Abdul Khadar, before the Police Jamedar, Rottikatte Range.

Ex.P/7. Order in Criminal Mis Case No.14 of 1920-21 on the file of the Ex.officio 1st Class Magistrate's court, T.Narsipur, declaring that the 1st party, Venkata Narasimha Char was entitled to be in possession of the garden in dispute.

Ex.P/8. Receipt for payment of Nanjappa assessment by Rangappa for Khata No.36 of Perigalli village for the year 1908.

Ex.P/9. - ditto - ditto - do- 1907.

Ex.P/10. - ditto - ditto - do- 1910.

Ex.P/11. Registered mortgaged deed dated 5-7-1916 executed by Narasamma and Achamma in favor of Madappa.

Ex.P/12(a) Shara in Ex.P/11.

Ex.P/12. Written statement written on 23-12-1920 by the 2nd party Venkat Narasiah and others in criminal Mis Case.No.51 of 20-21 on the file of the Special 1st Class Magistrate's court, Mysore.

The following exhibits were filed for the defence:-

Ex.D/1. Order in No.Criminal Mis.14 of 20-21 dated 27-12-21, from the 1st class

1st Class Magistrate,F.Rocks,to the Amildar of Malavalli Taluk,stating that Venkata Narasimha Char,1st Party,was entitled to retain possession of the garden in dispute and and that the original order of attachment had been ~~cancelled~~ cancelled.

Ex.D/2. Order sheet in Crl.Mis.Case No.14 of 20-21,on the file of the ex.Officio 1st class Magistrate's court,F.Rocks.

Ex.D/3. Complaint petition presented on 1-9-1920 by K.Venkata Narasimha Char to the Special 1st Class Magistrate,Mysore.

Ex.D/4. Certified copy of order in O.S.no224 of 19-20 on the file of the 2nd Class Magistrate'court,Mandya.

Ex.D/5. Extract in the deposition of P.W.11 on 4-4-23 in O.C.No. 117/21-22.

Ex.D/6. Entry against Khata No.36 in the khata register of the Purigali village for 1903-04.

Ex.D/7. Entry dated 19-8-1903 against khata No.36 in the Khirdi register of Purigali village for 1903-04.

Ex.D/8. Entry against khata No.36 ~~xx~~ in the khate register of the Purigali village for the year 1904-05.

Ex.D/9. Entry against khata No.36 in the averji book of Purigali village for 1904-05.

Ex.D/10. Entry against khata No.36 in the khate register of Purigali village for the year 1905-06.

Ex.D/11. Entry against khate No.36 in the khirdi register of-ditto-

Ex.D/12. Entry against khata No.36 in the averji book of the Purigali village for the year 1919-20.

Ex.D/13. Receipt dated 13-8-23 granted by Shanbhogue Lakshminarnappa, to Abdul Subhan for payment of assessment for Khata No.36 of the Purigali village.

Ex.D/14 Un-registered mortgage deed dated 10-6-20 executed by Venkat Narasiah in favor of Abdul Subhan.

Ex.D/15. Receipt dated 27-1-21 granted by Shanbhog Lakshminarnappa,to Abdul Subhan for payment of assessment for khata No.36 of the Purigali village.

Ex.D/16. Receipt dated 13-2-22 granted by Shanbhogue Lakshminarnappa to

Md.Khasim for assessment of khata No.38 of the Burigali village.

Ex.D/17. Registered mortgaged deed dated 26-1-91 executed by Venkata Narasiah in favor of Abdul Subhan.

Ex.D/18. Petition dated 20-4-91 by Abdul Subhan sah to the ex:Officio 1st Class Magistrate,Former Books.

Ex.D/19. Vakalat given by Abdul Subhan to Mr.M.K.Krishna Rao,Pleader.

Ex.D/20. Certified copy of petition dated 10-2-92 by Abdul Subhan of Malkuni to the District Magistrate,Mysore.

Ex.D/21. - ditto - ditto- dated 19-4-92 ditto- ditto.

Ex.D/22. Copies of hypothication deed dated 28-11-1897 and sale deed dated 6-7-02,executed by Narasamma,Nanganna and Puttu Rao,in favor of Venkata Narasiah.

Ex.D/22(a) Shara on Ex.D/18 by Police Jamedar,Rottiputta Nanna.

Ex.D/23. Endorsement dated No.47/9-8-22 from the District Magistrate, Mysore,to Mr.Venkatapathiah,Venkatanarsiah' counsel.

Ex.D/24. Gutta-Chit dated 26-9-20 by Venkatanarsiah in favor of Amanulla Khan.

Ex.D/25. Copy of registered sale deed dated 6-7-1902 executed by Venkat Narasiah alias Puttu Rao and his brother Nanjappa,in favor of Venkata Narsiah.

Ex.D/26. Copy of registered hypothication deed dated 28-11-1897,executed by Narasamma,Venkatanarsiah alias Puttu Rao and Nanjappa in favor of Venkata Narsiah.

Ex.D/27. Letter without date from Nanjappa to Venkatanarsiah,re-the marde in dispute.

Ex.D28. Another letter ditto- ditto.
Ex.D/29. Letter dated 22-2-1912 from ditto- ditto.
Ex.D/30. Letter dated 13-7-1907 from ditto-ditto.
Ex.D/31. Letter dated 24-2-1901 from ditto-ditto.
Ex.D/32. Letter dated 2-11-1902 from ditto-ditto.
Ex.D/33. Letter without date by ditto-ditto.
Ex.D/34. Receipt dated 25-2-1906 given by Shanbhogue Ramiah,to Rameowda for Venkata Narsiah for the payment of kandayam Rs.90/- for khata No. 38 of the Burigali village.
Ex.D/35. Order dated 23-5-91 on the order sheet in Criminal Misc Case.No. 14/90-91 on the file of the ex.officio 1st calss Magistrate.
Ex.D/36. Certified copy of order in C.C,No.92 of 19-20 on the file of the Special 2nd class Magistrate,Mandya.

In the court of the Special 1st Class Magistrate, Mysore.

Dated this 31st day of March 1924.

Present:- S.Krishna Rao,Esquire.,B.A.,B.L.,

Special 1st Class Magistrate.

Criminal Case No. 217 of 1921-22

Complainant.

Government of Mysore.

Vs.

Accused.

1. Peer Sabi.
2. Kajji.
3. Mahomed Khasim.
4. Amanulla Khan.
5. Karim Sabi bin Hussain Sabi.
6. Wahab Sabi.
7. Gaib Sabi bin Rachaiah
8. Kareem Sabi.
9. Ameer Sabi.
10. Abdulla Sabi.
11. Subhan Sabi.
12. Abdul Khadar bin Peer Sabi.
13. Gargeswari Karim Sabi.
14. Basavaiah.
15. Basalingaiah.
16. Basava bin Kyathana Wada.
17. Nanja bin Wada.
18. Helavana Wada.
19. Helavana Nanja.
20. Wadi Nanja.
21. Putta Walla
22. Linga Bin Dodda Racha.
23. Wadapur Racha.
24. Doddarane Nanja.
25. Putta Wada.
26. Kencha.
27. Abdul Subhan.
28. Abdul Rahiman bin Sahib Sabi.

Judgment.

This is a case of unlawful assembly. The accused are said to have gone to the garden of Venkata Narasimha Char(P.W.1) at Purigali in Malavalli Taluk on 27-4-1922 with the object of wrongfully obstructing him from entering into it, and taking its crop. The facts of the case are shortly these. On that morning P.W.1 was wrongfully pushed away by 3 servants of accuseds numbers 8, and 27 viz.Abdul Wazid,Mala and Malla,when he went to open the

lock of the garden-gate in order to go into it,and thereupon the Jamedar of Rottikatte Range got those men arrested and removed to some distance. This obstruction on their part forms the subject matter of enquiry in C.C.No.215 of 1921-22. After those persons were removed out of the way,P.W.1,entered the garden with his servants, and began to get the mango fruits plucked. Just at that time the accused came armed with clubs,and drove P.W.1 and his men away from the garden by show of force,and refused to heed the warning of the Jamedar who told them that P.W.1 had received permission from the court of the ex-officio 1st Class Magistrate of French Rocks,and 27th accused defied the Jamedar by stating that he had the order of the Deputy Commissioner and asked him to clear away. When the Jamedar began to write a report,the accused left the place saying- " you do what you can and we will do what we can." By xkxx their coming in large numbers to drive away the P.W.1 from the garden,the accused are stated to have constituted an un-lawful assembly. The 27th accused claims to be a mortgagee in possession of the garden,while P.W.1 claims to be the proprietory possession of it. The unterest claimed by both of them in it,is traceable to a common scource.

2. The garden originally belonged to three brothers who were un-divided in interest,viz.Subba Chari,Venkat Narasiah alias Puttu Rao and Rangappa. The 1st of them who is the eldest,died first leaving be behind him no male issue,but a widow by name Narsamma,a daughter called Achamma and the surviving two brothers. Some time after he died i.e. on 22nd November 1897,his two brothers and the widow,hypothicated the garden in dispute,a house,and a few other lands for rupees 4700/- to one Venkata Narasiah of Yelandur,and executed a hypothication bond(vide copy Ex.D/10) in his favour,and about 5 years afterwards i.e. on 6-7-02 said Rangappa and Puttu Rao alias Venkata Narasiah sold all those items of property to said Yelandur Venkata Narasiah,and executed in his favo a registered sale deed of which Ex.D/17 is a copy. Narasamma did not join them in executing the sale deed but has attested them. These lands house and the garden,are described in the hypothication bond as the ancestral property of the hypothicators. On 10-8-20 Yelandur Venk

Narasiah

mortgaged the garden for Rs.400/- to Abdul Subhan(27th accused) and executed in his favour the mortgaged deed(Ex.D/7 marked also by mistake Ex.D/15). It is said that the mortgaged deed was not registered owing to the subsequent ill-ness of the mortgagor. On 26-1-1921 he borrowed from Abdul Subhan an additional sum of Rs.50/- and executed in his favor for the aggregate sum of Rs.450/- a mortgage deed which was duly registered. This Ex.D/8 which is marked also Ex.D/16 by mistake.

3. Venkata Narasimha Char(P.W.1) traces his title to the garden from the same Rangappa. He bought the southern half of the garden on 3-11-1919,and the Northern half on 12-2-1920(vide sale deeds Exs. P/17 and P/18) from one P.Krishna Rao,who had bought the entire garden under the sale deed Ex.P/23 on 20-10-1919 from S.L.Narain Rao, who had in turn bought it on 22-11-1917(vide registered sale deed Ex.P/22) from the above named Narasamma and Achamma who claimed to have derived their title to it under a registered deed of gift(Ex. P/19) executed in their favor by the said Rangappa on 18-1-1916. Rangappa He died in the year year 1918. Till then he admittedly continued to be in possession of the garden and paid its assessment. The explanation given for it,on behalf of the prosecution,is that he managed it for the benifit of the owners Achamma and Narasamma,while the reason given for it by some of the defence witnesses,is that he looked after the garden as the agent of Y.Venkata Narasiah,from whom 27th accused has obtained its mortgage. It is however evident from the documents referred to above that Rangamma executed the gift-deed Ex.P/19 long after he,in conjunction with his brother Puttu Rao,parted with their interest by way of sale to Y.Venkata Narasiah. He had therefore no subsisting interest in the garden to make a gift of it to Narsamma and Achamma,who were not un-aware of the defect in his title,because the former had attested the sale deed and had also joined those Two three brothers in hypothicating it to to Y.Venkata Narasiah and they had all both been living together.

4. Apart from this defect in the title of P.W.1,the evidence

of

given by him in respect of the passing of consideration from him, makes one doubt whether after all he paid any money to his vendor. The consideration for the sale is 2000/- rupees. He admits that he made no payment to his vendor Krishna Char at the time of the sale. He says he paid him Rs.280/- and odd a few weeks afterwards and that a week or two after wards he passed a pro-note for Rupees 500/-,and has retained 700/-rupees with him for payment to Narsamma and Acharma. He adds that he made some payments later on the pro-note,which are not endorsed on it,that he sold to Narasamma a house of his of the value of Rs.500/- and that he still owes to Krishna Char Rs.400/- besides. This is no satisfactory statement at all in the matters of passing consideration for his two sale deeds.

5. As regards possession,Rangappa as already observed,admitted-ly continued to be in possession of the garden till his death in 1918. Before his death,Narasamma and Achamma had sold away the garden to S.L.Narain Rao. The date of the sale is 22nd December 1917 The later sold it to P.Krishna Rao on 20-10-1919. The interval between this transaction and the death of Rangappa, was so very short that it is not probable that Narain Rao was in possession of the garden. At any rate there is no proof as regards his possession or enjoyment. Narain Rao,is not examined as a witness here.P.Krishnarao sold away half of the garden within a fort night after his purchase and the remaining half within 3 months. He could not have had possession of the garden during that short period. The conduct of P.W.1,shows that he also did not get possession of it after his purchase. He preferred a complaint within a month after his purchase i.e. on 10-3-1920,to this court,requesting the court to take proceedings under section 145 Cr.P.C. against accused numbers 20 and 24,Peer Usuff Sab and another Lingi. Ex.D/29 is a copy of his application. It may be observed that he made only those four servants as parties to his application,and not their master on whose behalf those men were acting. That application was dismissed on 11-5-1920, by this court,after referring it to Police for

for local enquiry, and perusing its report, which disclosed no ground for apprehending breach of peace and on doubting the truth of the allegation, the application as regards his possession. The applica- dismissed merely on the ground of his absence(vide copy of order Ex.D/30).

6. Before, or at about the time of, filing the complaint(Ex. P/29) to this court, the Police had instituted a case of trespass into the garden, on the strength of the local Patels report which in turn had its foundation on the complaint of P.W.1(Venkata Narasimha Dhar), against 4th accused(Ammanulla Khan), 20th accused(Madi Nanja), Y. Venkata Narasiah(D.W.3) and 3 others, before the 2nd Class Magistrate of Mandya, who on full enquiry, discharged them, stating that the case disclosed only a civil ~~matter~~ dispute between P.W.1 and Y.Venkata Narasiah(vide copy of judgment marked ExD/3 ansd also by mistake as D/20). P.W.1 again preferred a petition(vide copy Ex.P/1) to this court on 1-9-1920 requesting that proceedings undser section 145 Cr.P.C. may be taken, making accused Nos.20 and 24, Narasamma and Achamma, Yelandur Venkata Narasiah, as parties, and proceedings were accordingly drawn up for enquiry. After wards the case was transferred to the file of the Ex-officio 1st Class Magistrate of French Rocks. Y. Venkatnarasiah, Narasamma and Achamma filed a written statement(Ex. D/31) contesting the claim of P.W.1, on various grounds. Y.Venkata Narasiah asserted his own right and possession in respect of the garden. The only noticeable feature about it, that it does not disclose the mortgage he had made of the garden to 27th accused, Abdul Subhan. During the course of the proceedings, Y.Venkata Narasiah sent a telegram or application to the count, for adjournemnt on the ground of ill-ness(vide order sheet Ex.D/19 in the case). P.W.1 then made an application (ExD/4) to the court stating that the names of Y.Venkata Narasiah and accused Nos.4 and 24 and Lingi, may be struck off the record, and the case be decided without them. The court struck off their names accordingly, and decided the case on 27-12-1921 declaring P.W.1 to have been in possession of the garden(vide order ex.P/3). P.W.1 had aslo prayed for attachment of the garden. It had

had been attached pending the decision of the case ,and the Amildar of Malavalli had been appointed as receiver(vide copy of the order Ex.P/2)

7. The Amildar is examined as P.W.12. He says that he received the order of Ex.officio 1st Class Magistrate(Ex.P/9) attaching the garden and appointing him as receiver,that he therefore took possession of the garden and placed it under the control of the Patel as per mahazir Ex.P/15. Soon after the attachment the 27th accused made an application (Ex.P/1) to the court,advancing his claim to the garden as mortgagee in possession from Y.Venkata Narasiah,stating that the attachment was made behind his back without making him a party to the proceedings,and requesting that he may be allowed to be in possession of the garden,and to take its crop at least as lessee from the receiv The Magistrate sent it on to the receiver for compliance with the request of the applicant(vide Ex.P/11). The Amildar obtained from him another application Ex.P/10 and leased the crop of the garden, to 27th accused for Rs.25/- which he deposited with him. The lease was sanctioned by the court (vide Ex.P/12). The Amildar says that after the final order of the court declaring the possession of PhW.1. in respect of the garden,was communicated to him,he directed the Police Jamedar to place the garden in the possession of P.W.1,that on receipt of the report(Ex.P/13) of the latter of having done so, he sent it on to the court with his own report Ex.P/14. The Jamedar Lingaraj Urs,examined as P.W.11,says that he in pursuance of the Amildar's order,delivered the garden to P.W.1 on 12-2-1922(vide receipt Ex.P/30) and reported the fact to him. But P.W.1 presented the petition Ex.P/4 to the Jamedar on the very next day(13-2-1922) stating that his entry into the garden was obstructed by the accused accused numbers 3,4 and 20. The Jamedar says that he sent Constable 6onstables for his help,but it did not produce the desired effect. P.W.1 says that accused Nos.2,20,22 and 3rd accused's son went on plucking the fruits of the garden and that when questioned, they threatened to assault him and that he therefore presented to Deputy Commissioner the petition(Ex.P/5) dated 20-2-1922, which was

was sent to the District Superintendent of Police, for disposal, but nothing was done, and that then on 4-3-1922, P.W.1 leased the garden to Peer Sab (P.W.2) and Jaffer Sab. This too did not stop the resistance of the rival claimants of the garden. He then sent another petition (Ex.P/6) to the Amildar and Head of Police on 25-4-1922, complaining that accused Nos 3 and 27 and their men were preventing his entry into the garden, plucking fruits in it, and damaging the trees etc., and requesting Police help to stop them. In the mean while he had been given a Police Constable to watch the garden on his behalf, and to protect his person. These petitions clearly show that not with-standing the declaration of the Magistrate, P.W.1 was not able to secure any un-interrupted possession of the garden till now. The petition Ex.P/6 was referred by the Amildar to the Jamedar, and the latter went to the garden on the evening of 26-4-1922, and there he found 3 persons who were the resident servants of accused Nos.3 and 27, viz, Wazid Sab, Kala and Walla who when questioned him told, that they had come to watch the garden under the order of their master. He returned and came back again on the morning of the following day (27-4-1922). Then happened the events narrated in para one which culminated in the arrest of those persons. Their conduct forms the subject matter of C.C.No.215 of 1921-22 as already observed. After those three men were thus arrested and removed, P.W.1 entered the garden with P.W.3 and 4 and began to cut its crop. The accused then came in a body. Some of them rushed into the garden, with the result, that P.W.1 to 4 ran out of it. The Jamedar thereafter wrote a report and sent it to the Sub Inspector, and then the accused left the garden and went away. To that effect P.W.1 to 11 have given evidence.

8. Accused Nos.1,5,7,9,10,12,15 to 19,21,23, and 25 to 26 were discharged under section 253 Cr.P.C, for want of sufficient identification. 22nd accused had died before. 19th accused also had died, by that time. Accused Nos.2 to 4,6,8,11,13,14,16,20 and 24 were discharged for offence under section 143 I.P.C.

9. P.W.2 says that he had taken the lease of the garden from P.W.1 in 1922 for 100/-Rs, paid him 10/-Rs and owes the balance. He also states that he executed a lease deed to him. It is not produced before the court. He is a resident of Talkad. Jaffar Sab who is said to have jointly executed lease deed with him, is not called as a witness. His evidence shows that he watched the garden for 1½ months, and that during that period the 2nd accused used to keep watch near the garden, and take away all the mango fruits from it as soon as they became ripe, stating that he had order from 3rd accused to do so.

10. P.W.3 states that he was watching the garden as servant of Rangappa while he was alive, and that P.W.1 engaged his service a month before the occurrence. Yet he says:- "I did not go to watch the garden after Jamedar gave its possession to P.W.1". He admits that 1st accused has preferred a complaint against him, and others, for shooting and hitting him with an axe. P.W.4 is a tenant of P.W.1.

11. P.W.5 admits that his father-in-law's brother is in dispute with 24th accused and other Kurubars, and that there have been litigation between them in criminal court, that 20th accused's brother's son preferred a complaint against him (the witness) and others in Malavalli Bench Magistrates Court, and there accused Nos. 21, 22, and 23 were witnesses for prosecution. P.W.6 is the nephew of the adoptive father of P.W.1. 3rd accused obtained a decree against this witness and assigned it to another. The decree is being executed, and the witness has contested it as being fraudently obtained. P.W.7 and 3rd accused are in dispute in regard to the sale of a tree. The latter had preferred a complaint of theft of its crop to the Police as against the former. The 3rd accused set up a sale from the witness in respect of the tree and produced a sale deed. As regards its execution, the witness denied before Sub Registrar, who therefore refused to register it and there was consequently an appeal to District Registrar and suit, to have it registered.

12. P.W.2 admits that 2nd accused was watching the garden on behalf of 3rd accused who is the father-in-law of 27th accused. PW.5 admits

admits that 20th accused watched the garden for 2 years on behalf of 27th accused, and that 4th accused took the crop of the garden in 2 years. The latter was lessee from Y.Venkata Narasiah.

13. 18 witnesses have been examined on behalf of the accused. D.W.1 and 7, and 8 are examined to prove the alibi-plea of 3rd accused, D.W.2,4,14,and 15 are examined to prove the pleas of alibi of accusedNos.14, 6,24 and 11,respectively. D.W. 5 and 6 are examined to prove the same plea of 2nd accused. D.W.18 is called to prove alibi for accused Nos.8 and 13. The evidence of all more or less inconclusive,for all the witness are naturally in definite about the time of the events to which they connect the accused. I must also say that the evidence of D.W.2,4 to 6,14,15 and 18,is also lean in quality. I do not wish to dwell at length on their evidence,for I think the case can be disposed on more substantial grounds.

14. Y.Venkata Narasiah is examined as D.W.9. He swears that as he was employed as Head Gumastha in the Jhagiri Office at Yelandur he left the garden in dispute and his other lands at Purigali,in the management of Rangappa, and has produced Exs.D/2 to D/27as letters written by the latter. Shanbhogue Lakshminarnappa(DW.16) identifies in them the writing of Rangappa. They re letters written from time to time to Rangappa,to Y.Venkata Narsiah giving an account of his management,stating the condition of the garden in dispute and its crop,and seeking instructions. Ex.D/28 is a receipt granted by the Shanbhogue(DW.16) to Maridevaru. It shows that D.W.9 sent in 1926 kandayam through Maridevaru, who was the tenant of another land of his, to the shanbhogue. The entry Ex.D/31 in Khirdhi book corresponds to this. He swears that after the death of Rangappa,he paid five year's kandayam of the garden which was in arrears,and then appointed Vadi-Nanja(20th accused) to supervise the garden,and after a year or two leased it out to 4th accused(Armanulla Khan) and executed in his favor the lease deed Ex.D/14 dated 28-2-1920,and that after expiry of that lease,he mortgaged it to 27th accused by executing the deeds Exs.D/15 and D/16.

15. The 27th accused, Abdul Subhan who after his discharge under section 253 Cr.P.C. was examined as D.W.2, states that his father-in-law Mahmud Khasim(3rd accused) supervised the garden on his behalf as he was living closer to it than he. He has produced --- receipts exs.D/10 and D/11 as the receipts obtained by 3rd accused for kandayam paid by him for the garden in the years 1920and 1921. The Shanbhogue(D.W.16) swears that he received the kandayam from 3rd accused, and granted to him those redeipts. The evidence given by D.W.10 to 13, also shows Rangappa's management of the garden till his death, for on account of Y.Venkata Narasiah, and that afterwards 4th accused(Ammanulla Khan) was in possession of it for 2 or 3 years as lessee from Y.Venkata Narsiah, and that after his lease expired 3rd accused looked after the garden on behalf of his son-in-law(Abdul Subhan-27th accused). Thus the testimony of those witnesses, proves to a great extent, that possession and enjoyment of the garden by Y. Venkata Narasiah and Abdul Subhan(27th accused). P.W.1 has not proved that he ever succeeded in getting actual possession of the garden and retaining it. He has not shown— he does not even say that he or his predecessors in title ever paid assessment of the garden or took its fruits. They have not been called as witnesses On the other hand not only is there some tangible evidence of --- enjoyment of the garden by Venkata Narasiah and Abdul Subhan and the payment of assessment on their behalf for it, but there is also on record the admission of some of the prosecution witnesses that 4th accused took the garden crop in 2 or 3 years as lessee of Venkata Narasiah. It is also admitted that 3rd accused had kept-- ceaseless watch over the garden, and never allowed any interference with his possession by P.W.1, even when backed by the active help of the local Police and confronted with paramount risk and injury to himself and his servants. The conduct of P.W.1 through -out from the date of his purchase of the garden, shows that he tried hard at at getting a foot-hold in the garden but did not succeed. I am of opinion that the mere declaration of his possession under section 145 by a competant Magistrate in respect of the garden, amounts to

no

No proof of his actual possession even though it is backed up by a process of formal delivery as against persons in possession who --- were no parties to the proceeding at the final stage. As against the decision in 11 Bombay Law Reporter 377 quoted by the learned Public Prosecutor there is the decision of Madras High Court reported in Indian Law Report 18 Madras 51, I prefer to follow the decision in the Madras case, which lays down ~~khaxxxdsxx~~ that orders under section 145 Cr.P.C. are binding only on the parties to the cases in which they are made.

18. On giving the entire evidence on record ~~my~~ best consideration, it appears to me that it establishes nothing more than on attempt on the part of PW.1 to take possession, and resistence to it by the --- servants, friends and followers of the 27th accused who is the ~~xxxxxxx~~ mortgagee in possession of the garden, which is supervised by his ------ father-in-law(3rd accused). To gather men to protect possession of ones own ~~party~~ property cannot amount to a meeting of un-lawful assembly. PW.1 had not secured peaceful possession, and his title to all appearance is defective. If he thinks that he has really a good title, to it in spite of what appears to be a defective one, he should establish his right in a Civil court as against the 27th accused, and his mortgager Y.Venkata Narasiah.. The conduct of the accused, as disclosed by the evidence of Prosecution witnesses amounts to nothing more than the --- exercise of the right of private defence of property. There is every reason to think that accused Nos. 3 and 27 have acted with a bonafide belief in the latter's right to the possession and enjoyment of the garden as mortgagee. Their conduct should be regarded as justifiable if they maintain their possession even with some show of force. If some of the other accused helped them in their effort to do so, they have not committed any offence, for they must also in law be deemed to have acted within the right of private defence of property(vide 18 Mysore Chief Court Report Page 231). However in this case, no force was used, for at their very appearance, P.W.1 left the place with his followers. I have to say that the charges for offence under section

section 143 Cr.P.C.,drawn up against the accussed numbers 2 to 4,6,8, 11,13,14,16,20 and 24,are ~~not~~ not established beyond reasonable doubt. I therefore acquit all of them of that offence and set them at liberty. The accused numbers 19 and 22 are dead. The other accused have already been discharged under section 253 Cr.P.C.

Pronounced in open court,

Sd/- S.Krishna Rao,

Special 1st Class Magistrate.
31st March 1924.

Note. Though this is a summons case,warrant case procedure was adopted as it had been so commenced and proceeded with by my predecessor.

Sd/- S.Krishna Rao,
Special 1st Class Magistrate.

Copy
S. Krishna Rao
Special I Class
Magistrate, Mysore

Criminal Case No. 217 of 1921-22.

The following witnesses were examined for the prosecution:-
1.Venkata Narasimha Char 2. Peer Sabi 3. Medini Malla 4. Madappa 5. Guru Malliah 6. Narasimha Gopala Char 7. Seenappa 8. Constable Mada 9.Constable Linga 10. Constable Sidda 11. Mr.Lingaraj Urs 12.Mr.Arunachella Mudaliar 13. Puttanna.

For Defence:-
1.Hakim Mahomed Yakoob 2.Abdul Subhan 3.Maliah 4.Mahantha Devaru 5.Mari Devaru 6.Ninga 7. Abdulla Sabi 8. Chinniah Sabi alias Abdul Rahiman 9. Venkata Narasaiah 10.M. Madappa 11. L Madappa 12.Puttappa 13.Mallappa 14. Nanje Gowda 15. Nanjundaiah 16.Lakshminarnappa 17. Sreekantiah 18.Syed Ameer Sab.

The following exhibits were filed for the prosecution:-

Ex.P/1. Copy of complainty petition dated 1-9-20 by Venkata Narasimh Char,to the Special 1st Class Magistrate,Mysore.

Ex.P/2. Copy of order dated 7-10-20 in Mis.No.51 of 20-21 on the file of the special 1st Class Magistrate,Mysore,ordering the attachment of the garden in dispute and appointing as receiver the Amildar of Malavalli Taluk,pending disposal of the case.

Ex.P/3. Final order dated 27-12-21 passed by the 1st class Magistrate,T. Rocks in Mis.14 of 20-21 declaring that the 1st party Venkata Narasimha Char was entitled to retain possession of the garden in dispute until ousted by due course of law.

Ex.P/4. Petition dated 13-2-22 by Venkata Narasimha Char,to the Police Jamedar,Rottikatte Range.

Ex.P/5. Petition dated 23-2-22 by ditto- to the Deputy Commissioner, Mysore District.

Ex.P/6. Petition dated 25-4-22 by ditto- to the Amildar of Head of Police Malvalli Taluk.

Ex.P/7. Petition dated 27-4-22 by-Ditto- to the Police Jamedar,Rottikatte Range.

Ex.P/8. Report dated 27-4-22 by thatPolice Jamedar,Rottikatte Range,to the Police Inspector,Malavalli.

Ex.P/9. Order of attachment dated 8-10-20 by the Special 1st Class Magte. Mysore;

Mysore, in Criminal Mis.No.51 of 20-21 to the Amildar of Malavalli Taluk.

Ex.P/10. Petition dated 5-5-21 by Abdul Subhan to the Amildar of Malavalli Taluk, praying that the crop of the garden in dispute may be leased to him for one year for Rs.25/-

Ex.P/11. Copy of order dated 29-4-21 by the 1st Class Magistrate, F.Rocks, directing that the garden in dispute may be leased out to Abdul Subhan.

Ex.P/12(a) Report No.351/5-5-21 from the Amildar of Malavalli Taluk, to the 1st Class Magistrate, F.Rocks, stating that Abdul Subhan's order may be accepted.

Ex.P/12. Order dated 10-5-21 from the 1st Class Magistrate, F.Rocks, confirming the grant of lease of the garden in dispute to Abdulsubhan for one year.

Ex.P/13. Report No.149/13-2-22, from the Police Jamedar, Kottikatte Range to the Police Inspector Malavalli Taluk, reporting that Venkatarara simha Char has been given possession of the garden in dispute.

Ex.P/14. Memo No.8 /14-8-22 from the 1st Class Magistrate, F.Rocks, to the special 1st Class Magistrate, Mysore, forwarding Ex.P/13.

Ex.P/15. Shara dated 28-11-20 by Purigali Patel on the mahazir re-the taki over possession of the garden in dispute by the Government as per order of the court.

Ex.P/15a. Mahazir drawn up re-ditto -ditto.

Ex.P/16. Sketch showing the scene of occurrence

Ex.P/17. Registered sale deed dated 3-11-19 executed by P.Krishna Char in favor of Venkata Narasimha Char.

Ex.P/18. Ditto- dated 22-2-20 by ditto- ditto.

Ex.P/19. Registered deed of gift dated 18-1-1916 executed by Rangappa in favor of Narasamma and Achamma.

Ex.P/20. Registered mortgaged deed dated 5-7-16 executed by Narasamma and Achamma in favor of Madappa.

Ex.P/20a. Shara on Ex.P/20.

Ex.P/21. Registered mortgaged deed dated 5-10-16 executed by Narasamma and Achamma in favor of S.L.Narayan Rao.

Ex.P/22 Registered sale deed dated

Ex.P/22. Registered sale deed dated 22-2-1917 executed by Narsamma and Achamma in favor of S.L.Narayan Rao.

Ex.P/23. Registered sale deed dated 20-10-19 executed by S.L.Narigan Rao in favor of P.Krishna Dhar.

Ex.P/24. Stamped receipt dated 20-2-1920 for Rs.200/- given by P.Krishna Dhar to Venkata Narasimha Dhar.

Ex.P/25. Receipt for payment of assessment by Rangappa for Plot No.36 of Purigali village, for the year 1907.

Ex.P/26. -Ditto - ditto - ditto- 1908.

Ex.P/27. -Ditto - ditto - ditto- 1909.

Ex.P/28. -ditto - ditto - ditto- 1910.

Ex.P/29. Order No.C.Mis.14/27-10-21 to the 1st Class Magistrate,F.Rocks, to the Amildar of Malavalli,stating that Venkata Narasimha Dhar, 1st party,was entitled to retain possession of the garden in dispute.

Ex.P/30. Vouched dated 12-2-22 given by Venkata Nara imha Dhar for having taken possession of the garden in dispute.

Ex.P/31. Written sata statement dated 28-12-20 by the 2nd party Venkata Narasaiah and others in C.Mis.No.61/20-21 on the file of the Special 1st Class Magistrate,Mysore.

Ex.P/32. Gift deed dated 10-12-16 executed by Rudrappa in favor of Narsamma and Achamma.

The following exhibits were filed for the defence:-

Ex.D/1. Petition dated 29-4-21 presented by Subban Sab,son of Rahimsab, to the Ex_officio 1st class Magistrate,F.Rocks.

Ex.D/2. Report dated 14-9-20 from Jamedar Guriviah to the Special 1st Class Magistrate,Mysore,with reference to the petition No.19/4_9_20,from Venkata Narasimha Dhar.

Ex.D/3. Certified copy of order in C.C.No.294/19-20 on the file of the Special 1st Class Magistrate's court,Mysore [illegible].

Ex.P/4. Petition dated 10-8-21 presented by K.Venkata Narasimha Dhar,1st party in C.Mis.No.14/20-21 on the file of the Ex_officio 1st class Magistrate's court,F.Rocks.

Ex.D/5. Petition dated 31-8-22 presented by Venkata Narasimha Char, to the Amildar of Malavally Taluk.

Ex.D/6. Certified copy of judgment in O.S.No.61 of 1909-10 on the file of the Munsiff's court Seringapatam.

Ex.D/7. Un-registered mortgaged deed dated 10-6-20 executed by Venkata Narasimha Char in favor of Abdul Subhan Sab.

Ex.D/8. Registered mortgaged deed dated 26-1-21 executed by Venkata Narasimha Char in favor of Abdul Suban.

Ex.D/9. Petition dated 22-4-21 by Subhan Sab to the 1st Class Magistrate K.Nocks.

Ex.D/10. Receipt dated 27-1-21 granted by Shanbhogue Lakshminarnappa to Abdul Subhan for payment of assessment for Khate No.36 of the Purigali village.

Ex.D/11. Receipt dated 15-2-20 granted by Shanbhog Lakshminarnappa to Mahomed Khasim for ditto- ditto.

Ex.D/12. Copies of hypothication deed dated 22-11-1897 and sale deed dated 6-7-1902 executed by Narsamma ~~xxxxxxxx~~ Rangappa and Puttu Rao, in favor of Venkata Narasaih.

Ex.D/12a. Acknowledgment by the Police Jamedar, Kottikatte Range for having received Ex.D/12.

Ex.D/13. Endorsement No.47/9-8-22 from the District Magistrate, to Mr. Venkata Pathiah, counsel for Venkata Narsiah.

Ex.D/14. Gutta chit dated 26-2-20 by Venkata Narsiah to Amanulla Khan.

Ex.D/15. Un-registered mortgaged deed dated 10-8-20 by Venkata Narsiah in favor of Abdul Subhan.

Ex.D/16. Registered mortgaged deed dated 26-1-21 by ditto -ditto.

Ex.D/17. Copy of registered sale deed dated 6-7-1902 executed by Venkata Narsiah alias Putturao and his brother Rangappa in favor of Venkata Narsiah.

Ex.D/18. Copy of registered hypothication deed dated 22-11-1897 executed by Narsamma, Venkata Narsiah alias Putturao and Rangappa in favor of Venkata Narsiah.

Ex.D/19. Order sheet dated in Crl.Mis.Case No.14/20-21 on the file of the Ex.officio 1st class Magistrate's court, K.Rocks.

Ex.D/20. Certified copy of order in O.S.No.224/19-20 on the file of the special 2nd Class Magistrate's court, Gulbarga.

Ex.D/21. Letter without date from Venkat Rao Deshpande Kamalsab re-the matter in dispute.

Ex.D/22. Another letter ditto- ditto.

Ex.D/23. Letter dated 2-2-1918 from Ali to- ditto.

Ex.D/24. Letter dated 18-7-1907 from ditto-ditto.

Ex.D/25. Letter dated 24-9-1901 from ditto-ditto.

Ex.D/26. Letter dated 9-11-1908 from ditto-ditto.

Ex.D/27. Letter without date of ditto-ditto.

Ex.D/28. Receipt dated 25-2-1903 given by Shanbhogue Ramiah to Venkat Rao Kamalsab, by name Gunde for the payment of assessment Rs.20/- for Khata No.36 of the Purigali Village.

Ex.D/29. Certified copy of the complaint petition presented by Venkatnarasimha Rao Deshpande complaining on 10-2-20 to the special 1st Class Magistrate, Yadgir,

Ex.D/30. Copy of order dated 11-2-20 of the dismissal of Venkatnarasimha Rao's complaint in Cr.Case.No.7/19-20 of the file of the special 1st Class Magistrate's court, Yadgir.

Ex.D/31. Entry dated 13-5-1903 against khata No.36 in the Khirdhi Regr. of the Purigali village for the year 1903-1904.

Ex.D/32. Entry against khata No.36 in the Averji book of ditto-ditto.

Ex.D/33. Entry against khata No.36 on 27-6-06 in the Khirdhi register of the Purigali village for the year 1905-06.

Ex.D/34. Entry dated 2-12-1919 against ditto-ditto for the year 19-20.

Ex.D/35. Receipt dated 16-6-13 (?) by Shanbhogue Subbarayinurmatha to Abdul Subhan for Rs.2-8-0 assessment for Khata No.36 of the Purigali village.

Ex.D/36. Petition dated 30-6-20 by Ahmed Ghouse Sab to the District Superintendent of Police, Yadgir.

Ex.D/37. Panchanama in Urdu dated by Amir Sab of Kalburgi.

In the court of the Special 1st Class Magistrate, Mysore.

Dated this 31st day of March 1924.

Present:- S.Krishna Rao, Esquire.,B.A.,B.L.,
Special 1st Class Magistrate.

Criminal Case No. 196 of 1921-22.

Complainant.

Government of Mysore. - VS

Accused.

1. Peer Sabi.
2. Shukkur Sabi.
3. Hajji.
4. Gaib Sabi.
5. Mahomed Khasim Sab.
6. Amanulla Khan.
7. Karim Sab.
8. Wahab Sabi.
9. Gaib Sabi.
10. Karim Sabi.
11. Ameer Sabi.
12. Abdulla Sabi.
13. Subhan Sabi.
14. Abdul Phadar.
15. Gargeswari Karim Sab.
16. Basaiya.
17. Basalingaiya.
18. Rachaiya.
19. Basava
20. Nanja.
21. Mada .
22. Helavana Nanja (Dead)
23. Mari Nanja.
24. Putta Malla.
25. Linga.
26. Madapur Racha.
27. Doddamane Nanja.
28. Putta Mada.
29. Kencha.
30. Abdul Subhan.
31. Abdul Rahimon.

Judgment.

This is a case of rioting and theft of mango crop of the garden bearing Survey No.581 at Purigali, in Malavalli Taluk, committed after having made preparation for causing hurt. The garden originally belonged to three brothers who were members of an un-divided family viz, Subba Chari, Venkata Narasiah alias Puttu Rao and Rangappa The first of them pre-deceased the others, and left behind them no male issue but a widow by name Narasamma and a daughter by name --- Achamma. Some time after his death, i.e. on 22nd November 1907, his surviving two brothers, and widow Narasamma hypothecated the garden, a house

house,and a few other lands situated at Purigali to one Venkata -- Narasiah of Yelandur and executed in his favor the hypothecation bond, copy of which is Ex.D/19,and on 6-7-1902 the two brothers sold these items of property to him and executed in his favor,the sale deed(Copy of which is marked Ex.D/18). It may be seen that Narasamma did not join them in executing this sale deed. But she has attested it. It may be noticed that in the hypothecation bond that the lands,the --- garden and the house are characterised as the ancestral property of the brothers. The vendee Venkata Narasiah mortgaged the garden with possession to one Abdul Subhan (38th accused) for Rupees 406/- on 10-6-1920,and executed in his favor the mortgage deed Ex.D/5. The mortgage deed was not registered. It is said that this was due to the subsequent ill-ness of the mortgagor. On 26-1-1921 he borrowed from Abdul Subhan another sum of Rs.50/-,and executed in his favor the mortgage deed Ex.D/6,for the aggregate sum of Rs.450/-. This mortgagee's claim to the possession of the garden,is being contested by one Venkat Narasimha Char(P.W.1). He purchased the garden from one P.Krishna Char by piece-meal. He bought the Southern half of it on 3-11-1919 and the Northern half on 12-2-1920(vide sale deeds Exs.D/35 and D/36 executed in his favor by P.Krishna Char). P.Krishna Char had bought the garden on 20-10-1919(vide sale deed Ex.D/34) from S.L.Narayan Rao who,in turn had bought it on 22-2-1917(vide sale deed Ex.D/33) from Narasamma and her daughter(Achamma) who claimed to have derived their title thereto under a registered gift-deed(Ex.P/14) executed in their favor by her husband's brother said Rangappa. It appears from the above documents that Rangappa had no subsisting interest in the garden when he executed the gift deed,for he had parted with it in favor of Y.Venkat Narasiah when he executed the earlier registered sale deed Ex.P/18 along with his brother Puttu Rao,in his favor. Nasasamma must have been aware of this fact and so also her daughter who lived with her,for the former had attested the sale deed and had also joined Rangappa and Puttu Rao in executing an earlier hypothecation bond(Ex.P/19) in respect of the same property in favor of the same person (Y.Venkat Narasiah).

2. The prosecution version under the circumstances, is that not with-standing the sale and the hypothecation made by Rangappa in favor of Y.Venkata Narasiah, in respect of the garden, the former continued to be in possession of it, and that possession was transferred from purchaser to purchaser in succession to the last purchaser(PW.1), and that the possession of P.W.1 receive Judicial recognition when he was declared to have been in possession of it by the Ex-officio 1st Class Magistrate of French Rocks, after an enquiry under section 145 Cr.P.C., and that the accused by entering into it and --- carrying away some of its crop committed theft and that their assemblage in or near that garden for that purpose constituted an un-lawful assembly. The accused numbers 1,2,3,5,6,19,23 and 31 have been charged for being members of an un-lawful assembly(Section 147 I.P.C.). Accused numbers 1 to 3 have been in addition charged with theft of mangoes from the garden(Section 379 I.P.C.). Accused Nos.1 and 3 have also been charged for causing hurt to P.W.1(Sec.323 I.P.C.). 22nd accused died before charges were framed. The other accused were discharged for want of sufficient identification.

3. The main charge in the case, is one of theft. But for it, there could not have been any un-lawful assembly, for it is alleged that the common object of the assembly was to commit theft of the --- crop of the garden. To establish that charge, it must be proved in the first place that the garden was in the possession of P.W.1, next that its crop was removed by the accused 1 to 3, and 3rdly, that they were actuated in so doing by dis-honest intention.

4. I will first consider the evidence on record to prove the possession of P.W.1. He does not say when he got possession of the garden. He has not called as his witnesses his predecessors-in-title to prove that any of them had possession of it. Both sides admit that Rangappa was managing the garden till his death. But neither side alleges that he was in possession of it on his own -- account till his death. It is contended for prosecution that he -- managed it for, and on behalf of, Narasamma and Achamma, till his death

We do not want to go into merits order.

which

which took place in 1918. If it were so, it is not probable that Narayan Rao who is said to have purchased it while Rangappa was alive was in possession of the garden. At any rate his possession is not proved. The purchaser from him viz. P.Krishna Char, sold away half of the garden within a fort-night from the date of his purchase and the remaining half within three months to P.W.1. He could not have had possession of it during that very short period. These circum - stances render im-probable the version that Rangappa managed the garden for Narasamma and Achamma. On the other hand, there is substantial evidence on behalf of the defence, to show that Rangappa -- managed it for, or on account of, Y. Venkata Narasiah from whom 30th accused had obtained mortgage of it with possession.

5. Y.Venkata Narsiah examined as D.W.1 swears that as he was employed as Head Gumastha at Yelandur in Jahgiri office, he had entrusted the management of his lands at Purigali to Rangappa who resided there, and that the garden in dispute was also left in his --- management after he bought it. He had produced letters Exs.D/8 to D/14 as letters written to him by Rangappa from time to time. They purport to be letters written to him between the years 1897 and 1912 by Rangappa giving an account of his management, stating the condition of the garden and its crop, and seeking instructions as to the disposal of the crop etc. Lakshminarnappa(D.W.2) who is a Shanbhogue of Purigali, has identified Rangappa's writing in those letters. The receipt Ex.D/7 shows that in 1906 D.W.1 sent assessment of the garden and some other lands to Shanbhogue Ramiah, through his temant Mari Devaru. D.W.2 Shanbhogue Lakshminarnappa swears that Ex.D/7 is in the hand - writing of Shanbhogue Ramiah who is now dead. He points out entry Ex.D/31 which is in his writing in Khirdhi book of 1905-06, which corresponds to the receipt. D.W.1 further states that in 1919 after Rangappa's death, he paid 5 years' kandayam of the garden, which had been left in arrears. He adds that after the death of Rangappa, he leased the garden to Madi Nanja for 2 years, and then leased it to Amanulla Khan(6th accused) and executed in his favor the lease-deed Ex.D/4. Abdul Subhan (30th accused) who was discharged under section

section 253 Cr.P.C. has been examined as D.W.10. He speaks of the mortgage he obtained of the garden(under deeds Exs.D/5 and D/6) from D.W.1(Y.Venkata Narasiah), and says that as he was residing far away from the garden his father-in-law,Mahomed Khasim(5th accused) managed it and paid its assessment on his behalf. He has produced receipts Exs. D/29 and D/31 as receipts obtained by 5th accused for assessment paid by him for the garden and Ex.D/30 as a receipt obtained by himself for payment of its assessment. Shanbhogue Lakshminarnappa (D.W.2) swears that he granted the receipts Exs.D/29,D/30 and D/31, and received the amount of kandayam therein named. The evidence given by D.W.3 to 6,corroborates that of D.W.1,as regards the management by Rangappa of the garden on behalf of D.W.1. They also speak of Vadi Nanja having watched it as servant of D.W.1 for two years,the subsequent enjoyment of its crop in 2 or 3 years by Amanulla Khan as lessees from D.W.1,and the later enjoyment of the garden by the 30th accused(Abdul Subhan). The testimony of these witnesses proves to a great extent the enjoyment of the garden by Y.Venkata Narsiah(DW.1) and that of Abdul Subhan(30th accused) since his mortgage,refutefully the contention of the prosecution that Rangappa managed it on behalf of Narasamma and Achamma,and establish the defence version that he managed it on behalf of DW.1. It may be seen that the evidence on record,does not even prove that PW.1 or his predecessors in title were in possession of the garden even after the death of Rangappa. P.W.1(X) himself does not say that his predecessors in title were in possession of the garden. He does not say when he got possession of it. He simply says that he leased the garden to Peer Sab in March 1922. Peer Sab examined as PW.3 on 22-8-1922 says:- " I have taken lease of the Purigali mango garden from PW.1 this year". He does not say who leased it out to him. He however admits that he did not take its crop,for ' Naripur and Akkamallana Hundi people took it away '. It may be seen that most of the accused are residents of one of the other of those two villages. PW.8 says:- " the garden came to PW.1's possession from Government". He evidently refers to the delivery of the garden to PW.1 by Police Jamedar of Rottikatte Range,as per order of the Amildar who as receiver was in possession of the garden during its attachment under section 145 Cr.P.C. The Jamedar is not examined in this case.

6. It appears from Ex.D/1 which is a copy of order(dated 12-4-1921) of discharge under section 253 Cr.P.C. of accused Nos.6 and 23,D.W.1(Y.Venkat Narsiah),and 3 others,in a case in which the Police of Malavalli placed a charge sheet against them before the 2nd Class Magistrate of Mandya,charging them for criminal trespass on the garden in question,that the Police investigation in that case started on the Patel's report dated 19-2-1920 which had its foundation in the complaint of PW.1. The trespass was stated to have been committed on 2-3-1920. Those persons were discharged on the ground that the --- possession of PW.1,had not been proved,and that evidence disclosed merely a Civil dispute. This fact shows that PW.1 tried a week after he purchased the garden,to get a foot-hold in it,through the aid of the Police and the Criminal court,and failed.

7. The next step taken by PW.1 with the same object,was to seek the aid of the criminal court under section 145 Cr.P.C. For that purpose,he presented a complaint to this court on 10-3-1920, praying that proceeding under that provision of law may be taken against accused Nos. 3 and 6 besides 2 others. Ex.D/38 is a copy of that application. The application was evidently made within three months from the date of his purchase while the trespass case ----- referred to above was still pending in the court of the 2nd Class Magistrate of Mandya. It may be observed that to this application PW.1 made only those 4 servants as parties and not their --- to master on whose behalf they were acting. He avoided making that application,Y.Venkata Narasiah as a party,though he was being prosecuted for criminal trespas on the garden. The application was referred by my predecessor to the Police,and he on perusing its report which disclosed no ground for apprehending breach of peace but on the other hand a doubt as to the reality of the allegation that PW.1 was in possession of the garden,and on observing that the absence of the applicant was significant,dismissed the application on 11-5-20 On 1-9-1920 PW.1 put in another application to this court again-- seeking enquiry under section 145 Cr.P.C. He made as parties to that application accused Nos. 20 and 24,Narasamma,Achamma,Yelandur

Yelandur Venkata Narsiah and another. Proceedings were drawn up accordingly. But the case was transferred to the file of the Ex - officio 1st Class Magistrate of French Rocks. There Y.Venkat Narasiah, Narsamma and Achamma filed a combined written statement of which Ex. P/8 is a copy. But they contested the claim of PW.1 on different grounds. It may be seen from it that Narasamma and Achamma impugned the sale deed executed by them to S.L.Narain Rao as a document obtained from them by fraud,and that Venkata Narasiah set up his own claim to the garden on the ground of purchase. This copy is filed by the prosecution to show that Venkata Narasiah did not disclose in his appli-cation the fact of his having had mortgaged the garden to 30th accused(Abdul Subhan). But it may be seen that the written statement was filed on 23-12-1920,and that at that time the registered mortgage deed Ex.D/6 had not come into existence,and the earlier mortgage deed Ex. D/5 which had come into existence on 10-6-1920,had not been registered However the 30th accused disclosed his mortgage deed to the court in his application dated 27-4-1921 while the case was still pending,and complained that the garden had been attached by the court behind his back without making him a party to the case,and prayed that he may be allowed to remain in possession of the garden,and to take its crop as at least a lessee from the receiver who had been appointed by the court to be in charge of the garden. The court sent on the application to the receiver viz.Amildar of Malavalli,who on receiving another application Ex.D/15 from him and leased out the crop to him. There is no evidence on record to show that his possession of the garden ceased with the taking of that crop. On the other hand the evidence is all the other way,and it shows that the possession continued with him ever after the attachment was raised. I have already referred to the evidence on this point,which shows that 30th accused had continued in possession of the garden and ~~had~~ managed through his father-in-law,Mahomed Khasim(5th accused) who was residing in a place closer to the garden than he.

8. The subsequent conduct of PW.1,also shows that he did not succeed in getting the garden into his possession. The petitions

petitions(Exs.P/1,P/2 and P/3) dated 13-12-1922,20-2-1922 and 25-4-22 made by him to various executive authorities after the proceedings under section 145 Cr.P.C. terminated in his favor,seeking help to enable him to enter and secure possession of the garden,and alleging that his entry into the garden was being obstructed or prevented by the accused numbers 5 and 30 or their servants,amount to a clear confession,that even on the date of Ex.P/3,viz.25-4-1922 which is the day preceding the occurrence,he had not gained any foot-hold in the garden. This fact coupled with the evidence adduced by the defence, shows that the possession of the garden rested with the 30th accused on the date of the alleged theft of its crop. The apparent defect in the title of PW.1 to the garden which is disclosed from the sale deed which was executed in favor of Y.Venkat Narasiah by Rangappa and Puttu Rao and attested by Narasamma,and by the prior hypothecation bond which had been executed by all those 3 persons in respect of the garden,before the date of the gift-deed(Ex.P/14) executed by Rangappa in favor of Narasamma and Achamma,and from which PW.1 traces his title and the comparative short intervals of subsequent successive sales leading to the purchase made by P.W.1,further render improbable the alleged possession of P.W.1 in regard to the garden.

9. It is contended on behalf of the prosecution that the final order of the Ex-officio 1st Class Magistrate in the case under Sec.145 C.P.C. which declared the possession of PW.1 in respect of the land,is binding on Y.Venkata Narasiah and also on the 30th accused who had derived his title from the former,and was aware of the proceedings as can be seen from his application (Ex.D/41) by which he obtained lease of the garden-crop while the case was pending,though Venkata Narasiah's name was struck off the record in that case(vide order sheet Ex.D/15) on the application of PW.1(vide application Ex. D/40). In support of this contention the Public Prosecutor who argued the case on behalf of the prosecution,relies on a case reported in 11 Bombay Law Reporter 377,where Mr.Justice Chandavarker,laid out that an order under section 145 C.P.C. is binding not only on the actual parties to the case but also on all the persons having notice of

of the proceedings. His learned collegue (Heaton,Judge) expressed no opinion on this point. He preferred to dispose of that case on another technical ground. The opinion of Chandavarkar, Judge, is supported by an earlier decision in 3 Bengal Law Reporter A.Cr.13. Quite the contrary is the ruling of Mr. Justice Best, in Indian Law Reports 18 Madras 51, where he expresses as his opinion that orders under Section 145 Cr.P.C. are binding only on the actual parties to the cases in which they are made. Such is also the opinion expressed in Indian Law Reports 21 Calcutta 29. With great respect, I am inclined to follow these rulings in preference to those laid down in the Bombay Law Reporter and the Bengal Law Reporter. Further, the opinion of Chandavarkar, Judge, in the case reported in Bombay Law Reporter and the decision reported in the Bengal Law Report,do not apply to this case, for they do not go so far as to lay down that final order under Sec.145 Cr.P.C. is binding on a party whose name was deliberately struck out from the record by the Court,acting on the application of the opposite party, on the ground that he was an unnecessary party. In this case the name of Y.Venkata Narasiah was removed from the record of the case under such circumstance as per his application. That application (Ex.D/40) becomes significant when attention is given to previous application Ex.D/38 of P.W.1, whereby he unsuccessfully endeavoured to start an enquiry under Sec. 145 Cr.P.C. To that application he did not make Y.VenkataNarasiah or 30th accused as parties. I am therefore of opinion that the order under Section 145 C.P.C. in favour of P.W.1 is not binding on the 30th accused or Y.Venkata Narasiah. Much less is it a proof of the actual possession of P.W.1.

10. Added to the defect already pointed out in the title of P.W.1 there seems to be some doubt about the passing of consideration for sale of the garden made to him by P.KrishnaChar. The sale was made to him by two sale deeds executed in his favour on two different dates, each dealing with one half of the garden. In respect of the earlier sale deed Ex.D/35, the consideration amount is Rs.1200/-.P.W.1 says that he paid to his vendor (Krishnachar) Rs.600/- about 20 days before the date of the document and that for it, he obtained no receipt.

As for the balance, he says he promised to pay it when the house which was also sold to him by the document was delivered to his possession. He states that he did not pay this amount to Krishna Char as the house was not put in his possession. P.W.1 admits that on the date of the later sale deed Ex.D/36 the consideration of which is Rs.800/-, he made no payment. He states that he paid Krishnachar Rs.288/- and odd 8 days afterwards, without taking voucher fot it, that a week later he passed to him a pronote for Rs.500/- and odd, and obtained a receipt Ex.D/37 for the aggregate sum of Rs.800/- He adds that he made some payments for the pronote and that only Rs.200/- and odd is due on it. But he admits that he obtained no vouchers for those payments or had them endorsed on the pronote. He has not produced the pronote in court. He has not adduced any evidence to prove the receipt Ex.D/37, or even to prove his purchases. This indifferent style of the transaction and non-production of evidence to prove the sale deeds executed in favour of Narain Rao, Krishnachar and P.W.1 in succession, raises some doubt as to whether they were not after all nominal documents got up for the purpose of litigation. However it is not within the jurisdiction of this court to adjudicate upon titles which depend on the operation of the sale deeds relating to them. But I have discussed this point, because it is necessary to see in this case, whether the accused No.30 (Abdul Subhan) has acted in taking, or attempting to take the crop of the garden, in the bonafide belief of his own superior title to the garden. So far, as is necessary to consider that question, the comparative merits of conflicting titles will have to be taken into consideration here. It is urged that such a question does not arise here, for such a plea is not actually set up here. But the decision reported in 24 Criminal Law Journal Page 451 and A 11 India Reporter 1922, Lahore series Page 414, lay down that where there is evidence on record which can support a right of private defence, the court should not ignore it and should give effect to it, even though it is not pleaded and the accused sets up a different defence. To the same effect is the decision reported in 19 Mysore Chief Court Report 231. The decision also lays down that the right of private defence available to one accused, would support an acquittal of other accused attached to him, in the absence of the evidence of particular acts against them.

So whether such a right of private defence can be invoked in defence of all the accused, in the case, depends on the circumstances of the alleged occurrence. I will therefore proceed now to discuss the evidence on record as regards those circumstances.

11. The date of the occurrence is 27-4-1922. On the morning of that date PW.1. is said to have been wrongfully pushed away and prevented from entering the garden, when he approached its gate by 3 servants (Abdul Mazid, Kala and Malla) of 30th accused (Abdul Subhan) and his father-in-law (5th accused). Thereupon the Jamedar of Rottikatte who had gone there with a few Constables, got those 3 servants arrested and removed to some distance. Accused Nos.30 and 5 are said to have been present then. The case against these five persons form the subject matter of enquiry in C.C.No.215 of 1921-22. Then followed events which gave the subject matter for enquiry in C.C.217 of 21-22. They are these. After those persons were thus removed out of the way, P.W.1 entered the garden with his servants and began to cut the crop of the garden, thereafter, accused Nos. 5 and 30 came with a large number of persons, Most of whom are accused in the present case, and drove away P.W.1 and his servants, from the garden by show of force, without heeding the warning given by the Jamedar of Rotti Katte who told them that P.W.1 had obtained possession from the court of the Ex-officio 1st class Magistrate of French Rocks. Those persons are however said to have left that place when the Jamedar began to write a report of that event to the Police Inspector of Malavalli. The events of the present case are said to have happened at night on the same day at about 11 P.M. The Jamedar left the place with the arrested persons at about 5 P.M. leaving P.W.1 near the garden to stay and watch, till the Police Inspector came and saw what had happened. He went to Boppagowdanapura, where there was a Police Station, to detain the arrested persons. The Police Constable Mada (P.W.5) who had been deputed for duty near the garden about 15 days before to help P.W.1 and the Constable Imam Khan (P.W.6) who had come there with the Jamedar, had also been left behind near the garden by the

Jamedar. They all say that they went away from the garden to the Purigali village at about 7-30 P.M. on hearing the arrival of the Police Inspector there. P.W.1 states that at 11 P.M. he went near the garden, fearing some foul play, for Khasim Sab (5th accused) had uttered in the presence of the Police Jamedar in the morning before leaving the garden, on seeing him write a report to the Inspector the significant words:- "you do what you can, we will do what we can". He adds that when he was 1/2 a furlong from the garden he saw lights in it and returned to the village as he was afraid to go further, that he then took to his aid P.W.3, 4 and 5 and went into the Moni on the west of the garden, and there they all observed heaps of dried leaves burning here and there, men moving with torches and lanterns and other persons cutting mango crop, that as the persons thus assembled there, comprised not only all the accused, but also some more, while they themselves consisted of only four persons, they felt themselves too weak in number to attempt to catch hold of any of them, went back to the village, and gave information to the Police Inspector, and that the Police Inspector sent them with a few more constables back to the garden and promised to come there after dressing. P.W.1 adds that Malla (P.W.8) also accompanied them and that he (P.W.1) took a gun with him. P.W. 1,4,5,6 and 8 state that on approaching the garden they divided themselves into parties and went in different directions round the garden, that he and P.W. 3,4,and 8 went on the Western side, and heard 6th accused (Amanulla Khan) says when a Police man whistled on the Southern side, that he was Ex-police Constable and knew that Police would not enter the garden at that hour, that when there was another whistle those who were in the garden began to escape from it by running away from openings in its Northern hedge and their endeavour to pursue and catch them did not succeed. P.W.1 states that at this juncture he saw 3rd accused carrying a load of mangoes, that on his trying to catch him, he received a blow on his right thigh from him with a club, that he then cried out and hit him with the 'barrel' of his gun, that he then found 1st accused come carrying mangoes bundled in his ಕುಪ್ಪಸ (thick upper garment), that when he tried to catch him, he gave him a hit with a club on his right arm, that just then 2nd

2nd accused came with a club and aimed a blow at him, but it fell on the head of the 1st accused whom he (P.W.1) had held, that he then tried to fire his gun at the 2nd accused and as its triggar did not act, he attempted to hit him with its butt-end, but the 2nd accused gave a strong blow with his club, which fell on the trigger of the gun which not only caused the gun to be fired, but also broke the gun to pieces, that he then raised alarm and the constables came with shouts implying help, and that thereupon all the accused ran away except the 1st who lay there, wounded on left thigh from "gun shots". By looking at the gun (Art.No.1), it is clear as is admitted by P.W.1, that neither its barrel nor the loading rod is damaged, and that only two pieces of wood near the trigger have come off. But it is curious that none of the other witnesses corroborate P.W.1 in his story regarding the beating he received, the cause for the injury sustained by the 1st accused on his head and left thigh, or the breaking of the gun.

12. P.W.3 (Peer Sab) and P.W.7(Sidda Setti) deny having been at all near the garden on that night. They are said to have turned hostile. P.W.4, 5 and 6 state that they went near P.W.1 and 1st accused, on hearing the sound of gun fire, and that by that time 1st accused had fallen on the ground wounded. P.W.8 states that he was standing near the garden gate, that as there was galata on the other side of the garden, he went away owing to fear, and heard the sound of gun fire when he was half-way to Kalleri. He is also said to have turned hostile. Of these witnesses, P.W.6 alone says that that he observed at that time some injuries on the person of P.W.1. P.W.10 (Police Inspector) who came there later on says also that he saw some injury on the person of P.W.1.

13. P.W. 1,4,5 and 6 proceed to say that after they saw there the 1st accused lying wounded, and the gun with its pieces, as well as certain sticks and a gunny-bag full of mangoes also lying closeby, they all ran towards the village to bring the Police Inspector, that they met the Inspector and Sub Inspector at the distance of 1/2 or 3/4th furlong from the garden coming, that they took them to the place

place where the 1st accused was lying, and found to their surprise that 1st accused was not there and was not found anywhere closely, on search that they found there only the broken gun, a few clubs, a bag containing mangoes and some mangoes scattered here and there, that the Inspector got some men from Purigali to make a mahazir and began to get it written out, but was not able to have it completed, as stones began to be pelted at them by the accused and others who again came there in a body, and that thereafter they all ran away, and returned next day with the Inspector who got some people from villages other than Purigali, where people refused to come for witnessing mahazir, and made mahazir near the garden. Then they noticed at the place where the gun, clubs and mangoes were lying, blood-stains on the ground. In these statements P.W.1, 4,5 and 6 are corroborated by the Inspector, P.Bhujanga Rao (P.W.10) and Sub Inspector, Nilkanta Rao (P.W.9). The statement of P.W. 1, that when frustrated at writing out mahazir by the pelting of stones and they all fled, they were hunted by the accused for some distance, is not corroborated by any one. Nor are the statements of the Inspector and the Sub Inspector, that from the pelting of stones, some of the panchayatdars and Constables received injuries, corroborated by any of the other prosecution witnesses. The evidence of these witnesses shows that when making mahazar next day, they inspected the garden also and found there mango fruits scattered here and there all over and burnt patches of ground here and there, which indicated that dried leaves had been collected over those spots and burnt to make light iin the garden, by the accused for removing its crop. None but the police Inspector (P.W.10) and the Sub Inspector (P.W.9) and Constable Imamkhan (P.W.6) state that they then noticed any injury on the person of P.W.1. P.W.9 describes it as one on the right fore-arm. P.W.6 describes all the injuries. P.W.10 does not describe it at all. The Sub Assistant Surgeon of Malavalli who is stated to have dressed his wounds there on 29-4-1922, states that he observed 3 injuries on his person. They are described by him as a contusion 2 inches long ½ inch broad on the right fore-arm, and a slight contusion on the right thigh, and another such contusion on

on left ring and little fingers. Judging from the description of these injuries, one can hardly say that P.W.1 was beaten with clubs. The Medical witness ~~dones~~ does not say that they should have been so caused. Whatever this be, I am not prepared to attach much value to the uncorroborated statement of P.W.1, that he was hit with clubs by the accused numbers 1 and 3. I therefore acquit them (accused Nos. 1 and 3) of the charge for the offence under Section 323 I.P.C. It is unnecessary to consider in this case as to whether the 1st accused received injuries in the manner stated by P.W.1 or was shot by the latter in the manner stated by D.W. 9, for it forms the subject matter of enquiry in the counter case No.C.C.218 of 21-22.

14. When the charge against the accused No. 1 and 3 for offence under section 323 I.P.C. collapses and the complications arising from the gun shot, injury sustained by the 1st accused as well as the voluminious evidence which has been adduced to prove that it was due to an accident, is eliminated from consideration in this case, the story of the prosecution reduces itself to the narrow compass of a simple theft of the garden crop and an un-lawful assembly having for its object the commission of that offence. The evidence in respect of these items, consists, as already shown, of the testimony of P.W.1, 4, 5 and 6. They state that the 30th accused (Abdul Subhan) and his brother-in-law(Mahomed Khasim,5th accused) entered the garden at night with a large numbers of followers comprising the accused and others, and began to cut its crop, that P.W.1 went there with the assistance of the Police to drive them out, and did succeed in driving them out, that then the 1st accused and a few others were found running away from the garden with a load of mangoes, and that P.W.1 seized the load of mangoes which was being carried by the 1st accused.

15. It appears to me improbable that accused No.5 and 30 and his followers, attempted to cut and remove the mango crop of the extensive garden which is 5½ acres in extent and contains 164 mango trees at dead of night on a new Moon day with the aid of lanterns, torches and light made by setting fire to collections of dried leaves. That

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was certainly not the proper time to cut crop of such an extensive garden. Further the history of dispute between Abdul Subhan (30th accused) and P.W.1 in respect of the garden, as disclosed by petitions ~~xxxxxxxxxxxx~~ P/1 to P/3, reveals that they made no secret of their determination and efforts to retain possession of the garden and to take its crop as well as to prevent P.W.1 and his men from even entering it. Even the incidents which had taken place in the morning and in the noon on the date of the occurrence which form the subject matter of enquiry in C.C.Nos. 215 and 217 of 1921-22, disclose the same disposition on their part. The record does not show that they were ever inclined to adopt stealthy measures to carry out their object. They do not seem to have been wanting in men or courage to openly cut and remove the crop. They have more than once set at defiance Police warning in the matter. It seems to me that it is such a deed which gave rise to the conflict under consideration on 27-4-1922. It is not quite material after all whether this occurred in the evening or at night. There are thus improbabilities as regards the prosecution version, while there is no evidence on record to support it except the testimony of P.W.1 and a few Constables who after all do not seem to be quite dis-interested. Even on conceding that they have spoken the truth, it appears to me that the charge of theft cannot sustain.

16. In the first place there is an apparent defect in the title of P.W.1 in regard to the garden as already pointed out, and no such defect is apparent in that of the 30th accused. This difference makes the latter's title appear superior to that of the former and this difference weighs in favour of the latter till the former establishes in a Civil Court that he has a better title to the garden. This fact supports the argument that 30th accused got the crop removed from the garden in the bonafide belief in his right to the garden. This circumstance excludes the existence of dishonest intention in him or in his followers who actually removed the crop. The absence of dis-honest intention in them, strikes at

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the root of the charge for theft. In the 2nd place the oral and documentary evidence on record, points more ∅ to the possession of the 30th accused than to that of P.W.1, in regard to the garden. This evidence has already been discussed above at length. The absence of possession in P.W.1, renders the charge of theft in-effective. It is un-necessary in the absence of these ingredients viz. possession in P.W.1 and dis-honest intention on the part of the accused, to try to find out whether the evidence adduced by the prosecution establishes, whether any of the accused did remove any mangoes in substantial quantity from the garden. I therefore record a finding of acquittal of accused numbers 1 to 3 on the charge of theft.

17. When the finding is that the removal of mangoes from the garden in question by any of the accused, does not amount to theft, it is not possible to say that the accused who went to the garden to cut its crop on behalf of the 30th accused, had the common object of committing that offence there. Thus the charge against the numbers 1, 2, 3, 5, 6, 15, 17, 23 and 31 for being members of an un-lawful assembly also collapses, and they must all be acquitted of the charge for offence offence under section 143 I.P.C.

18. Some witnesses have been examined in this case to prove alibi-plea, set up by the accused numbers 2, 5 and 15. D.W.7, 8, 15 and 16 state that accused numbers 2 and 5 attended the marriage of D.W.8, who is the son of D.W.7, to the daughter of D.W.6 at Kalkuni, which took place on 24-4-1922 at Kalkuni. The entry in Khazi's register Ex. D/43 and letter of invitation Ex.D/42 and the evidence of those witnesses, certainly prove that the marriage took place on 24-4-1922. It may be that accused numbers 2 and 15 attended the marriage on that date. But I am not satisfied with the statement of some of them that they were in the marriage house after the marriage on that date was over. D.W.2 who is the Assistant Inspector of Hindustani schools does not say so. So I cannot say that alibi plea set up by the accused numbers 2 and 15, are conclusively proved.

The 30th accused says that he did not go near the garden at

garden at all on 27-4-1922, but had sent his servants there to keep watch. He adds that he was in his village, Kalkuni on that night. But he has not examined any witness to prove that fact. However the prosecution has crumbled down by its own inherent weakness which it was not possible to cover up in spite of all effort in that direction. I acquit accused numbers 1,2,3,5,6,15,19,23 and 31. 22nd accused is dead. The other accused have already been discharged under section 253 Cr.P.C.

Pronounced in open court,

Sd/- S.Krishna Rao,

Special 1st Class Magistrate,
31st March 1924.

Copy

S. Krishna Rao

Special I Class
Magistrate, Mysore

Criminal Case No. 196 of 1921-22.

The following witnesses were examined for the prosecution:-

1. Venkata Narasimha Char 2.Mr.E.C.Wesley 3. Peer Sabi 4.Linga 5. Constable Mada 6. Constable Imam Khan 7. Sidda Setti 8. Malla 9.Nilkanatarao and 10.Mr.P.Bhujanga Rao.

For Defence:-

1. Venkata Narsiah 2.Lakshminarnappa 3.M.Madappa 4.L.Madappa 5. Puttappa 6.Mallappa 7.Peer Sabi 8. Mr.Ahmed Hussein 9. Nanje Gowda 10.Abdulsubhan 11.Abdul Rahimon Sabi alias Chinnaiya Sabi 12. Gulam Mohadim 13.Yacoobsab 14.Peersabi 15.Syed Abdul Karim 16.Ameer Sab 17. Sreekantiah.

The following articles were produced in this case.:-

Art.No.1. A broken gun with its parts.

Art.No.2. 8 sticks.

Art.No.2(a) Blood-stained stick

Art.No.3. Four gunny bags.

The following exhibits were filed for the prosecution:-

Ex.P/1. Petition dated 13-2-22 by Venkata Narasimha Char(P.W.1) to the Police Jamedar,Rottikatte Range,Malavalli.

Ex.P/2. Petition dated 20-2-22 by Venkat Narasimha Char(PW.1) to the Deputy Commissioner,Mysore District.

Ex.P/3. Petition dated 25-4-22 by Venkat Narasimha Char to the Amildar and Head of Police,Malavalli Taluk.

Ex.P/4. Petition dated 27-4-22 by Venkat Narasimha Char to the Polie Jamedar,Rottikatte Range.

Ex.P/5. Medical certificate No.44 dated 29-4-22 granted by the Sub Assistant Surgeon,Malavalli,to Venkat Narasimha Char.

Ex.P/6. Report dated 27-4-22 by the Police Jamedar,Rottikatte Range,to the Police Inspector,Malavalli.

Ex.P/7. Complaint petition dated 28-4-22 presented by Venkat Narasimhacha to the Police Inspector,Malavalli Taluk.

Ex.P/7a. Order dated 28-4-22 from the Police Inspector,Malavalli to the Police Jamedar,Rottikatte Range.

Ex.P/8. Written statement presented on 23-12-20 by the 2nd party Venkata Narasiah and others in Crl.Mis.Case No.51/20-21 on the file of the Special 1st Class Magistrate's court,Mysore.

Ex.P/9. Receipt for payment of assessment for the year 1907, by Rangappa for Khata No.36 of Purigali village.

Ex.P/10. -Ditto - ditto- for the year 1906.

Ex.P/11. -Ditto - ditto- for the year 1909.

Ex.P/12. -Ditto - ditto- for the year 1910.

Ex.P/13. Registered morgaged deed dated 5-7-1916 executed by Narasamma and Achamma in favor of Madappa.

Ex.P/13(a) Shara on exhibit P/13.

Ex.P/14. Registered gift-deed dated 18-1-1916 executed by Rangappa in favor of Narasamma and Achamma.

Ex.P/15. Petition dated 5-5-21 by Abdul Subhan to the Amildar of Malvalli Taluk, praying that the crop of S.No.561 of Purigali village, may be leased out to him for Rs.25/- for one year.

The following exhibits were filed for the defence:-

Ex.D/1. Certified copy of order in C.C.No.224/19-20 on the file of the Special 1st Class Magistrate's court, Mysore.

Ex.D/2. Copies of hypothecation deed dated 28-11-1897 and sale deed dated 6-7-1902 executed by Narasamma, Rangappa and Putturao, in favor of Venkata Narasiah.

Ex.D/2a. Shara by the Police Inspector of Rottikatte Range for having received the above copies etc.,

Ex.D/3. Endorsement No.47 dated 9-8-22 from the District Magistrate, Mysore, to Mr.Venkata Pathiah, counsel for Venkata Narasiah.

Ex.D/4. Gutta Chit dated 26-2-20 executed by Venkata Narasiah in favor of Amanulla Khan.

Ex.D/5. Un-registered mortgage deed dated 10-6-20 executed by Venkata Narasiah in favor of Abdul Subhan.

Ex.D/6. Registered mortgaged deed dated 26-1-21 executed by ditto-.

Ex.D/7. Receipt dated 25-2-1906 granted by Shanbhogue Ramiah to Mari Devaru of Ramegowdanpura, for Venkata Narsiah, for the payment of assessment (Rs.90/-)rupees, for khata No.36 of the purigali village

Ex.D/8. Letter without date from Rangappa to Venkat Narsiah, re-the garden in dispute.

Ex.D/9. Another letter-ditto- ditto.

Ex.D/10. Letter dated 22-2-1912 ditto-ditto.

Ex.D/11. Letter dated 13-7-1897 ditto-ditto.

Ex.D/12. Letter dated 24-2-1901 ditto-ditto.

Ex.D/13. Letter dated 2-11-1903 ditto-ditto.

Ex.D/14. Letter without date ditto-ditto.

Ex.D/15. Order sheet in criminal Mis.No.14/20-21 on the file of the Ex-officio 1st Class Magistrate's court,French Rocks.

Ex.D /16. Certified copy of petition dated 20-2-22 by Abdul Subhan of nKalkuni to the District Magistrate,Mysore.

Ex.D/17. Ditto - ditto - dated 18-4-22 ditto.

Ex.D/18. Copy of registered sale deed dated 6-7-1902 by Venkat Narsiah alias Puttu Rao and his brother Rangappa in favor of Venkata Narasiah.

Ex.D/19. Copy of registered hypothecation deed dated 22-11-1897,executed by Narsamma ,Venkat Narasiah alias Puttu Rao and Rangappa in favor of Venkata Narasiah.

Ex.D/20. Entry against khata No.36 in the khate of Purigali village for he year 1903-04.

Ex.D/21 Entry dated 19-8-1903 against khata No.36 in the khirdi of Purigali village for 1903-04.

Ex.D/22. Entry against Khata No.36 in the khata register of the Purigali village for the year 1904-05.

Ex.D/23. Entry against khata No.36 in the Averji book ditto -ditto.

Ex.D/24. Entry against khata No.36 in the khata register of the Purigali village for the year 1905-06.

Ex.D/25. Entry dated 25-2-1906 against the khata No.36 in the Khirdi register of the Purigali village for the year 1905-06.

Ex.D/26. Entry dated 6-12-19 against khata No.36 of Purigali village in the khirdi register for the year 1919-20.

Ex.D/27. Entry against khata No.36 in the khata register of the Purigali village for the year 1919-20.

Ex.D/28. Entry against khata No.36 in the Averji book ditto-ditto.

Ex.D/29. Receipt dated 27-1-1921 granted by Shanbhogue Lakshmianarana fo Abdul Subhan to Mahomed Khasim for payment of assessment to Khata No.36 of the Purigali village.

Ex.D/30. Receipt dated 13-8-23 ditto - ditto.

Ex.D/31. Receipt dated 13-2-22 granted by Shanbhogue Lakshminarnappa to Md.Khasim,ditto-ditto.

Ex.D/32. Registered mortgaged deed dated 5-10-1916 executed by Nara Samma and Achamma in favor of S.L.Narain Rao.

Ex.D/33. Registered sale deed dated 22-2-1917 executed by ditto-ditto.

Ex.D/34. Registered sale deed dated 20-10-19 executed by S.L.Narainrao in favor of P.Krishna Char.

Ex.D/35. Registered sale deed dated 20-10-19 executed by P.Krishnachar in favor of Venkata Narasimha Char.

Ex.D/36. Ditto -ditto- dated 12-2-1920 ditto.

Ex.D/37. Stamped receipt dated 20-2- 1920 for Rs.800/-given by P. Krishna Char to Venkata Narasimha Char.

Ex.D/38. Certified copy of the complaint petition dated 10-3-1920, presented by Venkata Narasimha Char to the Special 1st Clas Magistrate,Mysore.

Ex.D39. Copy of order dated 11-5-1920 of dismissal of Venkat Nara Simha Char's cpmplaint in Mi.Case No.66/19-20 on the file of the 1st Class Magistrate's court,Mysore.

Ex.D/40. Petition dated 10-8-21 presented by K.Venkat Narasimha Char, 1st party,in C.Mis.No.14/20-21 on the file of the Ex.officio 1st Class Magistrate,French Rocks.

Ex.D/41. Petition dated 29-4-21 presented by Subhan Sab,son of Rahimon Sab to the Ex-officio 1st Class Magistrate,F.Rocks.

Ex.D/42. Lagnapatrika in Hindustani produced by Amir Sab of Kalkuni.

Ex.D/42(a) Kannada translation of Ex.D/42.

Ex.D/43. Entry in Nikka Register.

Ex.D/44. Petition dated 30-4-1922 by Mahomed Khasim to the District Magistrate Superintendent of Police,French Rocks.

In the court of the Special 1st Class Magistrate, Mysore.

Dated this 31st day of March 1924.

Present:- S.Krishna Rao,Esquire.,B.A.,B.L.,

Special 1st Class Magistrate,

Criminal Case No. 218 of 1921-22.

Complainant.

Peer Sabi
by
Mr.S.Venkatapathiah,
and
Mr.B.Narasinga Rao,
Advocate , Mysore.

Accused.

1. Venkata Narasimha Char
2. Vali Peer Sab(dead)
3. Medini Malla,
by
(Mr.S.Krishnaswamy Rao
Advocate, Mysore.)

Judgment.

This is a case of the use of criminal force and causing grievous hurt to one Peer Sab by the accused,in their attempt to take wrongful possession of a garden,while he was watching it along with another as the servants of one Abdul Subhan,who is a resident of Kal-Kuni and who claims to have been in possession of it as a mortgagee from one Venkata Narasiah who is a resident of Yelandur.

2. This case is based on a complaint preferred by the said Peer Sab who is residing at Naripura, in T.Narsipur Taluk, to this court on 22-6-1922. The main allegations in it are these. On the evening of Thursday the 27th of April 1922 he was watching as usual the Mango garden bearing Survey No.581 situated at Purigali in Malavalli Taluk, as the servant of Abdul Subhan of Kalkuni who was in possession and enjoyment of it as mortgagee from its owner Y.Venkata Narsiah,the accused came with their followers along with the Police Jamedar and his retinue, and attempted to enter the garden, and that the complainant stood across them to prevent their entry. The 1st accused abused the complainant, got him pushed by the 3rd accused who was his servant, and directed the 2nd accused to break open the cross-bar of the garden gate

garden-gate. The 2nd accused attempted to break the cross-bar of the gate by hitting it with an axe which he had in his hand and the complainant bent his body forward over the cross-bar. Then 3rd accused dragged the complainant by his arm and the 2nd accused aimed a blow with his axe to the head of the complainant. The blow fell on the head of the complainant and caused a bleeding wound on the head. The complainant held up his wound by his two palms, and abused the 1st accused for getting this outrageous act done. The 1st accused then said that the complainant was talking non-sense(ಎಂದು) = fired the loaded gun which he had brought with him and wounded him on his right leg. As the result of the firing in close quarters, the lower garment of the complainant caught fire, and he lost sense. After he gained strength to travel, he went to the dispensary at T.Narsipur and underwent treatment there for over one month as in-patient. His wounds have not been healed yet. He is still undergoing treatment. His right leg has become permanently maimed. The wound on his fore-head has left a permanent dis-figuring scar on it. In the dispensary his life was hanging in the balance.

3. It is also alleged in the complaint that the 1st accused was backed up for various reasons by the Police who have suppressed these brutal acts on the part of the accused, twisted facts, and concocted a false case against the complainant and others, characterising the shooting of the complainant as being accidental. Though the statement of the complainant was recorded in the dispensary, the Police made no enquiry about his alligations till now. The statement given by the complainant when examined under Section 200 Cr.P.C. disclosed that it was the Amildar of T.Narsipur who took down his statement, and that one Abdul Mazid also watched the garden along with him as usual on 27-4-1922. To this effect, the complainant examined as P.W.1, has given evidence. He is corroborated in all details by Abdul Mazid, who is examined as P.W.2 and who swears that he and P.W.1 had both been appointed by Abdul Subhan, and were receiving from the latter salaries at the rate of Rs.8/- and 7½ Rupees respectively per month. He does not appear to have actually

seen

seen the blow given on the head of P.W.1 by the 2nd accused,as he had just then gone round the garden to drive away Monkeys. But he says that he observed 1st accused shoot P.W.1 with his gun. P.W.3 to 8,12 and 13 corroborate the whole story of P.W.1,regarding the main incidents which took place there. They speak about the attempt of the accused to enter the garden,the manner in which they were prevented from so doing by P.W.1,and the way in which each of the accused acted in attacking him and causing wounds on his head and thigh.

4. P.W.3 is a Black-smith residing in the neighbouring village of Akkumallana Hundi. He states that he had been keeping a Kolmi (smithy) in a Tope(grove of trees), which is about 1 or 1½ furlongs from Purigali village and 10 marus from the garden where the occurrence took place, — according to the evidence of P.W.12,the distance is only 5 or 6 marus — for the past 20 days,owing to scracity of water in his village or close by his own or other villages, and the existence of water convenience due to a tank or a pond called Parvathakatte which is situated just above the tope. It appears from his evidence that owing to this facility,he used to remove his Kolmi,to this tope every year during summer season,and that many persons used to come there from all the surrounding villages to get iron implements made or mended. P.W.4 to 8 appear, according to their evidence to have gone to the 'Smithy in the tope' for such a purpose. They and P.W.3 state that they saw all the incidents which occurred in the garden from the tope where P.W.3 was engaged in smithy work. P.W.13 states that he observed the same from his field which is adjacent to the garden on it's Western side.

5. P.W.9 is a Thoti of Purigali village. But he pays a kandayam of 100/- rupees to Government. He states that on that evening,while he was coming from Akkamallanhundi, where he had gone for collecting kandayam,he passed by the garden in question and noticed near its gate Peer Sab(P.W.1) fallen on ground with injuries on his head and one of his thighs,from which he was bleeding, that it appeared to that P.W.1 in an un-conscious state of mind,and that

that P.W.2 who was there told him that 2nd accused hit with an axe on the head of P.W.1,and that 1st accused shot him with his gun.

6. There does not appear to be any reason for suggesting that P.W.4 to 9,12 and 13 are interested in the complainant or his master, or entertain any grievance or other prejudice against the accused.

7. It appears from the evidence of P.W.2,3,5,6,7 and 12 that the Jamedar of Rottikatte Range came to the spot with some Constables, and blamed 1st accused for doing such an act and the latter expressed regret and told him that he got provoked on hearing P.W.1 abuse him, and implored him to save him from the consequences,and that the Jamedar rode away on cycle without giving any definite reply except by simply saying that he would go and inform the Police Inspector.

8. It further appears from the evidence of P.W.,3,4,6,8 and 11 that after P.W.1 fell down on receiving the gun shot wound,P.W.8 went to Purigali and brought P.W.11,who fetched a cart wherein he removed P.W.1 to his house at Naripura. P.W.18 says that he saw P.W.11 bringing P.W.1 in a cart to his house. They both speak of the existence of bleeding wounds on the head and one of the thighs of P.W.1 and the removal of the latter to dispensary at T.Narsipur. P.W.18 admits that on the day following the removal of P.W.1 to his house,the Police Inspector of Malavalli (D.W.6), the Sub Inspector (D.W.10) and Rottikatte Jamedar(D.W.7) came to Naripura,and saw the wounded Peer Sab(PW.1) and gave a yadi to P.W.18 for taking P W.1 to the dispensary. All these persons say that P.W.1 was unable to speak at the time.

9. The evidence of Sub Assistant Surgeon of T.Narsipur Mr.Thirumal Rao(P.W.19) states that Peer Sab(P.W.1) was brought to his dispensary on 29-4-1922 with a Police yadi, (Ex.P/8). He adds that he observed then (1) an incised wound 1½ " deep on the left frontal eminence of the head,and (ii) a punctured wound of the size of pie with torn edges,3 " deep in the middle and inner aspect, of the left thigh of Peer Sab,and that the skin around the 2nd

injury

injury to the extent of 12 " in circumference had been burnt,and turned black. He is of opinion, that the 1st injury must have been caused by a sharp instrument like a chopper or an axe and the 2nd injury by a gun shot. It is clear from his evidence, that the 2nd injury was dangerous to life,that P.W.1 underwent treatment as in-patient for about 42 days i.e. 30-4-1922 to 2-6-1922, and that during the major portion of that period the patient used to alternately become weak and recoupe. Thus the hurt caused to P.W.1 thereby is one of a grievous nature.

10, The 2nd accused died before the prosecution was closed. There is therefore no need to consider the evidence on record in regard to the part he played in causing an injury to P.W.1. The evidence discussed above shows,that the 1st accused inflicted a dangerous wound on P.W.1 by means of a gun,and that on account of it he was laid up in hospital and was unable to attend to usual avocations in life for about 6 weeks. Thus he has evidently caused grievous hurt to him. There appeared to be no reason prima facie to say that the grievous hurt was not voluntarily caused for I will presently show that he did not act in aggressive spirit and to strike terror into P.W.1 who was opposing his entry to the garden under reference,and to impress the same feeling on the mind of the other servants of Abdul Subhan,who had been similarly employed by him to watch the garden. But at the same time there are not enough materials to infer an intention to cause the death of P.W./ by shooting. No doubt some of the eye-witnesses of the occurrence,state that 1st accused when firing the gun said to P.W.1 that he would kill him. But those words do not necessarily express what he intended. It is probable that those words were also intended to cause fear to P.W.1,so that he may be over-come by it and get away from the garden gate which he was guarding. There was much to risk and loose,and little to gain for 1st accused by killing P.W.1. So the circumstances of the act does not warrant the imputation to him of intention to kill PW.1 If he had intended to kill him he would have aimed the gun at the head or heart of P.W.1 or other vital part of his body. It seems to me that he intended to maim him or only threaten him. Even in

the latter case he must have known that he was doing an act,dangerous to his life but he may not have ~~xxx~~ known that he would be doing an act likely to cause his death or such bodily injury as was likely to bring about his death. Therefore such ~~injury~~ intention or knowledge as is contemplated in section 307 I.P.C. do not seem to have existed in the mind of the 1st accused,when he fired the gun at P.W.1. So he was only charged for offence under section 326 I.P.C. and not for an offence under section 307 I.P.C.

11. The defence of the 1st accused is the combination of a plea of accident and justification. The justification consists in his saying that he was the owner in possession of the garden,that P.W.1 and others were cutting and removing its crop by theft,that he went armed with the gun for self protection and also with Police aid,the accident alleged that while he was pursuing the culprits,he was caught by one of them and at the time they both were struggling with each other,another culprit dealt a blow at his gun which fell on its triggar and produced the effect of actual firing of the gun,and that its shots went off and hurt one of the thighs of P.W.1. The 3rd accused's defence also is like it,with the addition that as he did not yield to over-tures of Mahomed Khasim(P.W.16) not to depose for for prosecution in the counter case relating to the theft of the garden crop as against him and others.

12. In order to show that P.W.1 was not acting un-lawfully and did not encroach upon the right of the 1st accused,when he prevented him from entering the garden under reference, some evidence has been left in to prove that Abdul Subhan on whose behalf he acted in thwarting 1st accused from getting into the garden and cut its crop,was ~~xxxxxxxxxx~~ in lawful ~~position~~ possession of the garden.

13. Abdul Subhan is examined as P.W.15. He says that the garden was mortgaged to him by Yelandur Venkata Narasiah(P.W.20). To prove that allegation,he has produced Exs.P/2 and P/3. Ex.P/2 is an un-registered mortgage bond executed to him by P.W.20 for 400/-rupees. He says that he paid only ~~xx~~ 200/- rupees on the date of the execution of Ex.P/2 and promised to pay the balance at the time of of its registration,that P.W.20 went to Yelandur promising to return soon

soon but failed to do so owing to his ill-ness,that on that a P.W.20 wanted the balance of Rs.200/- for expenses,and the amou sent to him with a servant of his,that Ex.P/2 remained un-regist owing to expiry of time fixed for registration,that some time af wards i.e. on 26-1-1921 P.W.20 went to him(the witness) received 50/- more,executed the bond Ex.P/2 for Rs. 450/- and got it registered witness adds that the garden was in the possession of Amanulla Khan (P.W.14) on the date of Ex.P/2,as lessee from P.W.20,that the term of that lease expired about 15 days after-wards and P.W.14 vacated the garden in his favour and that he then employed P.W.1 and 2 to wate the garden. He is corroborated on this point by P.W.20 and by P.W who has produced Ex.P/1 dated 26-2-1920, as the lease deed executed him by P.W.20. P.W.14 adds that he was in possession of the garden i the year 1919 and 1920 as lessee from P.W.20. The latter also says so. P.W.15(Abdul Subhan) further says states that after he took up possession of the garden,his father-in-law Mahomed Khasim(PW.16) managed the garden on his account as the latter was living in a village(Haripura) which was closed to the garden than Kalkuni,where he(P.W.16) resided. He has produced receipts Exs.P/6 and P/7 as those those obtained by P.W.16 for kandayam paid by him in the years on 27-1-1921 and 15-2-1922 to Lakshminarnappa(P.W.17) who as Shanbhogue of Purigali,granted those receipts. He is corroborated on this point by P.W.16 and 17. As regards the occurrence he says that he he heard at Kalkuni about 2 days after the event,that his servant Peer Sab(P.W.1) was shot and his garden was looted,that he then went to Mysore, to consult lawyers and also to get released on bail his servants Gybesab and Khasim Sab,who had been arrested by the Police of Malavalli,on the ground that they had taken part in the theft of the garden -crop, and that when he went to the office of the Deputy Commissioner for the purpose of presenting a petition for that end,he was himself arrested there by the Police Superinter-dent of French Rocks,and was taken to the Police Station and was eventually marched off to French Rocks.

14. Y. Venkata Narsiah (P.W.20) states that the garden had been hypothecated to him along with some other lands and a house in the

in the year 1897 by one Rangappa and his brother Puttu Rao alias Venkata Narsiah and their eldest brother's widow Narsamma(vide copy of the registered hypothecation bond,Ex. P/13) and that on 6-7-1902 they were sold to him by those two brothers who executed to him registered sale deed of which Ex.P/2 is a copy,and which Narsamma attested to signify her consent to the sale. He says that he produced the original documents in a case against him before the Police Jamedar of Rotti Katte Range,by name Guruviah,who is now dead; that the latter who placed a charge sheet in the case did not produce the documents there,and that so he did not get them back(vide endorsement,Ex.P/11 on his application for the return of the documents). He has also produced a copy of those documents(Ex.P/10) on which the said Jamedar Guriviah has acknowledged the receipt of the original documents. He says that after he bought the lands, the garden and the house he left them in the management of Rangappa,who managed them till his death which took place in 1918,because he (the witness) was residing far off at Yelandur where he was Head Gumastha in the Jahagir Office. He has produced letters Ex.P/14 to P/17 as those written to him by Rangappa from time to time,giving him information thereby about the state of the garden,and its crop. That they are in the writing of Rangappa,is proved by the evidence of Shanbhogue Lakshminarnappa(P.W.17),who knows his writing. Rangappa as Agent of Y.Venkata Narsiah,paid assessment of the garden during his period of management. The fact that Rangappa paid its assessment is not disputed by the accused number one,who has made an attempt to make it appear that he paid it on account of his predecessors in title,Narasamma and Lakshamma. Y.Venkata Narasiah(PW.10) states that after the death of Rangappa,he leased the garden to Amanulla Khan(P.W.14) in the years 1919 and 1920. Ex.P/1 is stated to be the lease-deed executed to the latter by him(Y.Venkatanarsiah) in the year 1920,and that when the period of that lease was nearing its end,he mortgaged the garden to Abdul Subhan by executing Exs. P/3 and P/2 under circumstances already stated. That said Abdulsubhan paid the assessment of the garden afterwards,is proved by the contents of receipts,ExsP/6 and P/7 granted to him by P.W.17(Shanbhogue Lakshmi Narnappa).

No document under Ex. P/1 in 1919.

Receipts Exs.D/4 to D/7 which purport to have been granted to Rangappa in the year 1907,1908,1909 and 1910,and which are proved by the evidence of Shanbhogue Lakshminarnappa(PW.17) and that of Shanbhogue Srinivas Murthi(DW.12),who are both shanbhogues of Purigali village, and the entries Ex.D/18(a) to D/23(a) of Khirdi books show payment of assessment by Rangappa. This fact is also proved by the evidence of P.W.17 who says that Rangappa made those payments for Y.Venkata Narsiah for whom he was managing the garden. Shanbhogue Srinivasa Murthi(D.W.12) is silent on this point. But he admits that after the death of Rangappa,Y.Venkata Narasiah(PW.20)paid four years assessment of thegarden which was in arrears, with the permission of the Jahagirdar of Sivana Samudrum, Jahgir in which Purigali village is situated. He also concedes that Abdul Subhan (PW.15) who is a mortgagee from P.W.20,paid the assessment of the garden in all the following years. P.W.17(Shanbhogue Lakshmi Narnappa)admits having attested Ex.D/9 which purports to be a will executed by Rangappa bequeathing the garden and certain other items of property,to Narsamma and Achamma. It is dated 10-12-1915.This was superceded by the registered deed of gift executed by the same man in favor of the same two women on 18-1-1916 in respect of the same property. This is also some how marked as Ex.D/9. The Shanbhogue has also attested the endorsement of discha Ex.D/8a on theregistered mortgage deed (Ex.D/8) dated which purports to have been executed by Narsamma and Ac ons Jademadappa in respect of the garden. But the same sha has also attested Ex.P/3 the un-registered mortgage deed executed by Y. Venkata Narsiah in favor of Abdul Subhan on 10-6-1920. So it seems to me that payment of assessment by Rangapp and the execution by him of a will or gift-deed in favor of Narsa and Achamma,or themortgage deed(ExD/8) in favor of Jade adappa, do not necessarily prove that he(Rangappa) was the owner of the garden in question,in the face of the hypothecation deed he executed long before to Y.Venkata Narasiah to which Narasamma herself was a party,and the subsequent sale deed he executed to

the

the same person which Narsamma attested. After all we are not concerned in this case with the determination of title to the -- garden. It is only the question of its possession which is relevant to the case.

15. As regards possession, besides the evidence of P. 14,15,16,17 and 20, to which I have already referred, there is record the evidence of P.W. 9 to 12 which shows that Rangappa managed the garden on behalf of Y.Venkata Narasiah, after he sold it to him on 6-7-1902, that subsequently Y.Venkata Nasasiah was in possession through his servant and lessee Amma Nulla Khan, and ~~t~~ that Abdul Subhan has been in possession of it since he obtained mortgage of it from Y.Venkata Narsiah. This position is contested by the 1st accused, who claims to have been in possession of it ever since he bought it, and also by his servant the 3rd accused on the same ground. He ~~xxxx~~ also traces his right to the garden from Rangappa who was, according to him, the owner of the garden.

16. The 1st accused's written statement sets forth the channel through which Rangappa's title came to become vested in him, It is alleged there, and the evidence of his 15th witness (Narayana Rao) and 16th witness (Krishna Rao) shows that the garden was mortgaged to ~~xxxxxxxxxxxxxxxxxxxx~~ Narayana Rao on 5-10-1916 by Narasamma and Achamma as per mortgage deed, Ex.D/3 executed by them in his favour, that the same persons sold it to him on 22-2-1 by executing the registered sale deed Ex.D/10, that Narayana Rao sold it to P.Krishna Rao, by executing in his favour, the regist sale deed Ex.D/32 dated 20-10-1919, that the latter sold ~~it~~ t accused the southern half of it on 3-11-1919 (vide sale deed D/34) and the Northern portion of it on 12-2-1920 (vide sale dee Ex.D/35). The 1st accused has produced Exs.D/5 to D/7 (kandayam Receipts), ~~to which~~ reference has already been made, and the documents marked, Ex.D/8 to D/10 and D/37 to D/41. D.W.16 (P.Krishnarao) says that he received them from Narayan Rao (D.W.15), when he ---

ought

bought the garden from him, and gave them
sold the garden to him. Narayan Rao says
mortgage ~~deb~~ debt of Jade Madappa which had
on his favor been ~~in~~ incurred end by Narasamma and ach
mortgage deed Ex.D/8, with the payment endorsed
He adds that he received Ex.D/9 from his vendor
purchase. Neither Narsamma nor Acharma has been d
ness in this case. So Ex.D/9 whether it be the wil
or the registered gift deed, executed by him in favor
and Achamma, is the origin of 1st accused's title to t
question. But the gift deed of 18-1-1916 and the wi
came into existence long after the hypothecation deed(
P/13 is a copy) to which Narasamma is also a party, and t
deed(of which Ex.P/12 is a copy) which is attested by Nar
and were executed by Rangappa in favor of Y.Venkata Narasiah
whom Abdul Subhan subsequently obtained a mortgage of the gar
So Rangappa had no subsisting interest in 1915 and 1916 to mak
will of gift of the garden. Narasamma also by joining in execut
the hypothecation bond and attesting the sale deed ~~ded to Venkata~~
~~Narasiah into the belief~~,- whether with good motive or bad motive
was estopped from questioning the right of Venkata Narsiah to, the
garden. Acharma who is the daughter of Narasamma, has been living
with the latter, must have known this transaction. Thus there is
this apparent defect in the title set up by the 1st accused in
respect of the garden. No such defect appears in the title of
Y.Venkata Narasiah and in the mortgagee interest of Abdul Subhan.
More than the relative merits of the conflicting titles of these
rivals, the question relating to their possessions of the garden
is of paramount importance.

16. I have already dealt with the evidence adduced by the complainant in respect of his masters(i.e.Abdul Subhan's) possession of the garden. I will refer now to the evidence adduced on behalf of the accused with reference to the alleged possession of the 1st accused.

11 19 witnesses have been examined for the defence. 61 of Purigali. He has attested Ex.D/10. He speaks s possession of the garden till his death, which took 6 years ago. He does not know who had been in pos since then. He admits that Rangappa was in possessio garden as the Agent of Y.Venkata Narsiah. He is therefore red hostile by the accused, who put in a copy of his deposi- given by him in another case before the 2nd Class Magistrate o Mandya on 9-2-1921, to show that he then stated, that after -- ngappa died, the garden was in the possession of Narasamma and chamma. But Narasamma and Achamma have not been called here as witnesses to prove that they were in possession of it at any time Whatever this be the testimony of the witness, does not support the accused's possession. D.W.2 does not say that Narasamma and -- Achamma were in possession. He names as persons who were in possess ion of the garden, Rangappa, Jade Madappa, Narayan Rao and Venkata Narasimha Char(1st accused). He however admits that Jade Mad did not take the crop of the garden. D.W.3 also spoke of Rangappas possession and then said that he did not know who was in possessior of it after Rangappa's death. But on after thought he stated that 1st accused has been in possession of it for the past 1½ years. D.W.8 tried to speak of Rangappa's possession, but confessed his want of personal knowledge in the matter. D.W.9 also made a similar endeavour and similarly broke down. He has attested Exs.D/9 and D/8(a). He says that he does not know who was in -- possession of the garden on the date of Ex.D/8(a). P.W.11 states that Rangappa, Jade Madappa and Narain Rao and 1st accused were successive possession of the garden. But he admits cross examination that he has not seen Narayan Rao at all, that knowledge of Jademadappa's possession is based on the single fa that he(witness) once took Jade Maddappa's cattle into the gard for grazing at his direction. He also says that servants of t 1st accused and those of Sowcars(Abdul Subhan and Mahomed Kha watched

watched the garden
in the garden. Narain
Achamma and Jademadappa ar
ior of thegarden. He adds t
Samanna to look after the garde
out the garden to a Muslim Musea
the 2nd year of his purchase, and to
in the 3rd year. He adds that those
lease deeds, which he has left in his house
to have given any of them to his vendee Fri
assessment of the garden, he admits that he did
had directed his agent Shamanna to pay it, and is not a
whether he paid it. The lessees mentioned by him, have
called and examined. Now is Shamanna Called & Exa
be said to have been proved. Krishna Char(D.W.18) has
about the possession of Rangappa, Jade Madappa, Narain Rao, hi
(for 7 days) and of the manure 1st accused. As regards Jade
Madappa's possession, his knowledge of it is based on the fact that
he saw him one day in the garden. He states that as Narain Rao
always lived at Yedore, his servants cultivated the garden under
the supervision of Shamanna. He does not corroborate Narayan Row
statement that Musalmen had taken up lease of the garden. D.W.14
Seshagiri Rao) is a School Master now at Bosale and was in Purisai
as such in 1916-17 and 1917-18. He has no knowledge of any kind
as regards the possession and enjoyment of the garden by any one.
He has written Exc.D/10, D/8b, D/31 and D/33. His evidence proves
those documents and nothing else.

18. Thus the evidence adduced by the 1st accu
that his predecessors in title, were in possessi
and that from the last of them in the seri
of it, is not at all satisfactory. The
to foresee this contingency. He
in his favour under an enquiry

...o 1st. Class Magistrate of F.
...nd the delivery said to have been
...y to give effect to that order. Ex.
It is dated 27-12-1951. As the garden
...g the disposal of the case, and placed
...ceiver who happenned to be the Amildar of
... was sent to him with the letter marked Ex.D/15
...ion. Ketti Katte Jamedar Lingaraj Urs (D.W.7) says
...r. Ex.D/14 was communicated to him by the receiver
...e direction to deliver the garden to the 1st accused,
...as per order of the court was entitled for possession,
...that he accordingly carried out the direction by delivering th
...garden to him. He has produced the delivery receipt, Ex.D/16,
obtained by him then from the ~~one~~ 1st accused. It is dated 12-2-52.
This receipt is written at the foot of a mahazir made for having
delivered the garden to the 1st accused in the presence of witness
es. That such delivery was made, is proved by the evidence of
not only D.W.7(Jamedar), D.W.1(Patel Chenna Basaviah) and D.W.3
and 18 but also by the evidence of P.W.17(Shanbhogue Lakshmi
Narnappa). But it may be seen that there is no provision in
the code of Criminal Procedure, for executing an order under Sec.
145 Cr.P.C. Then the delivery made by the Jamedar by way of
execution of such an order, has no legal effect. It has not
therefore the effect of ousting a man in possession of the garden.
There is evidence on record to show that Abdul Subhan was in
possession of it then, and has been in possession of it even now.
After the garden was attached he made an application Ex.E/4 to the
Ex-Officio 1st Class Magistrate of French Rocks, complaining th
...en which was in his possession as mortgagee from Y.Venkata
...d been attached by the court behind his back witho
...arty, and praying that he may be left un-disturbed
...t on treating him as lessee from the receiv
...ey from him on deposit if necessa
...rden. The ... ordingly

out to him b. the r
lease was sanctioned
in possession of the gar
Jamedar to 1st accused afte
Abdul Subhan was not evicted
itself has not the effect of such
the 1st accused. The final order of
Cr.P.C.,by itself has not the effect of
possession of the 1st accused. It declare
already been in possession. It is only bindi
were parties to the case in which it was made,till
Subhan was no party to it. It is therefore not bindi
Nor is it binding on Y.Venkata Narasiah,for his name was
out of the record (vide order sheet Ex.P/20),though he had
for an adjournment on the ground of his ill-ness,because
accused made an application Ex.P/19 stating that he would give
up as un-necessary. When the name of Y.Venkata Narasiah was thus
deliberately removed out of the record,and then order was obtained
in the case,the order cannot be certainly binding on him or on
those who derive title or interest in the garden from him. It
was argued on behalf of the accused on the authority of decision
reported in 11 Bombay Ex.L.R. page 377,of Mr.Justice Chandravarkar,
who laid down that an order under section 145 Cr.P.C.is binding
not only on the actual parties to the case but also on all
having notice of the proceedings. His learned colleague
Chandravarkar Mr. Justice Heaton did not subscribe.
He preferred to dispose of the case on another te
Expressing that view,the learned Judge,Mr.Jus
followed an earlier decision reported in
J.13. A different opinion has been expr
a case reported in Indian Law Repor
down that orders under section
parties to the cases in whi

21 Cal.29 - I prefer to adopt
ct. Further the deci-
d Bengal Law Report do not go so
final order in a case under sectio
a party whose name was deliberately
ord on the application of the opposite party.
opinion that the order made in favor of the 1st
section 145 Cr.P.C. is not binding on Y. Venkata
bdul Subhan.. It does not therefore constitute
possession
of 1st accused's ~~evidence~~ of the garden as against either
em.. As already observed his previous possession is not
tisfactorily proved, and much less the acquisition of subsequent
possession. On the other hand his subsequent conduct impl[illegible] the
contrary. On 13/2/1922(the day immediately following the date
of the so called delivery) the 1st accused presented petition Ex.
D/17, which shows that by that delivery the 1st accused did no
at all get actual possession of the garden. It is alleged the
Mahmed Khasim(P.W.16) who is the father-in-law of mortgagee, Abdul
Subhan, was found with his followers at the garden and effectually
prevented the 1st accused and his servant from entering the garden
or repairing its broken hedges. Ex.D/2 is put in as the
statement of Mahomed Khasim(P.W.16) taken on 10-4-1922 by Linga
Raj Urs(Jamedar of Rottikatte Range) with reference to the inci-
dents of 13-2-1922. P.W.16 admits his signature under it. It
purports to contain a statement to the effect that he obstructed
entry of 1st accused into the garden, not knowing the delivery
had been made to him by the Jamedar, and that he would under-
not to obstruct him any more. On reading the whole sta
ear that Mahomed Khasim maintains that the obstruc
ccused, was justifiable on the ground of the right
the garden. The undertaking then is valu
in law. Much less is it binding on
who it is not alleged, had author

his son-in-law to give such an undertaking. Further there is not record to show that the undertaking was acted upon, and that 1st accused was allowed to take or succeeded in taking pos of the garden.

19. It is now clear that the evidence adduced on beh the accused, to prove that the 1st accused's predecessor in had possession of the garden and transferred it to 1st ... and that in consequence thereof the 1st accused was in actu possession or enjoyment of the garden, or to show that 1st came by possession of the garden as the result of declarati in his favor under section 145 Cr.P.C. as regards the possess as a consequency of delivery of the possession (whether v invalid in law) made by the Police, to 1st accused (it was vi (justifiable) (unjustifiable) to give the declaration some effect by an ex act. On the other hand the evidence on record, points to th trary, and supports the prosecution theory that Abdul Subhan been in possession of the garden through his Agents and serv the apparent defect in the source of the 1st accused's title, been already noticed. The superior title as mortgagee, which Abdul Subhan has acquired in respect of the garde is evident, and should prevail, till the 1st accused establishes a better title to it in Civil court. In this circumstance, t 1st accused's plea of justification standing apart from the combined of accident, in respect of the injury sustained by P.W.1 (Peers by the firing of the gun which 1st accused had in his hands before then, cannot at all sustain.

20. It remains to see how far the 1st accused's plea of accident, is established. In order to understand it, the evid adduced by him as to the manner, time and circumstance in whic such a shooting accident happened, has to be threshed out in de This is not made quite clear in his written statement. Almo all the defence witnesses state that there was no 'Holm

at all in the tope which is close to the garden in dispute. Some of them admit that they did not closely examine the tope and can only say that they were unaware of any 'Kolmi' there. D.W.4,5,9 10,and 18,speak about the action taken after P.W.1 was wounded. The persons who have come forward as eye-witnesses of the events which happened when P.W.1 received the gun shot wound are two Police Constables viz. Nanga(D.W.13) and Mada(D.W.19).

21. D.W.19(Mada) is one who had been deputed for duty with the 1st accused about 15 days before,to watch the garden,and -- prevent any 'Naripura people' from entering it. That, he says was the personal instruction given to him by the Superintendent of French Rocks. D.W.13 had gone there with the Jamedar of Rotti Katte Range on the morning of 27th April 1922. D.W.14 (Constable Sidda) had also gone there with the Jamedar. But he left the place before the events which gave occasion for the injury sustained by P.W.1,developed. So D.W.13 and 19 speak first of all about the 1st accused's attempt on the morning (about 10 or 11 A.M.) of 27th April 1922,to enter the garden in spite of the protest and obstruction of 3 servants of Abdulsubhan and his father-in-law Mahomed Khasim,and the arrest of those three servants in consequence by the Jamedar. This incident forms the subject of enquiry in the counter case No.215 of 1921-22,as -- against all those three persons for offence under Section 341 I.P.C. They then speak of the successful entry of the 1st accused with his servants into the garden ,the commencement by them of the operation of the cutting of crop,and the fact of their having been turned out of it by a large crowd headed by Abdul Subhan and Mahomed Khasim,as well as the disappearance of the crowd on the Jamedar coming to write out a report which he sent with the Constable Sidda(D.W.4) to the Police Inspector. This event -- forms the subject of enquiry against Abdul Subhan,and Mahomed Khasim and 31 others persons for offence under section 143 I.P.C.

in the counter case No.217 of 192-92 The Jamedar is said to have also left the place with the arrested persons,after the crowd dispersed and left the place,and went to the Police ~~station~~ out-post at Boppagowdanapura. D.W.14 has also spoken about these events. He did not come back that day. So D.W.13 and 19 alone speak of the subsequent events of that date,which culminated in P.W.1 receiving a gun shot wound.

22. D.W.13 and ~~24~~ 19 state that they were near the ~~Jamedar~~ garden with 1st accused,after Jamedar left the place till 8 or 8-30 P.M. when ~~xx~~ they went to the village of Purigali on hearing of the arrival of the Police Inspector there. They informed him of the events ~~xx~~ which had transpired and the steps taken in respect of them. They all took tea in the village. But 1st accused was not without suspicion as to the possibilities at mid-night. D.W.13 and 19 ~~stat~~ state that the 1st accused took them near the garden just to see it and come back,but ~~xhe~~ when they were some distance from it, they saw in it movements of men with lanterns and torches and the flames of dried leaves burning here and there, that they went -- back to the village and gave information to the Inspector,and that according to the instructions of the Inspector who asked ~~xx~~ them to go in advance and promised to follow them soon,they came back to the garden. Their evidence shows that Medini Malla,Malchad Peer Sab,who were the servants of the 1st accused and are 2nd and 3rd in this case,as well as Constables,Imam Khan,Lingi and Boriah had accompanied them,but when they aproached the garden they divided themselves into 2 parties,that D.W.13 and the accused went on the western side of the garden into a toni,while the other 3 constables went on the Eastern side;that one of them whistled,with the result that the men who ~~came~~ were in the garden broke through the ~~gates~~ gaps in the hedge of the garden on the -- Northern side and took to their heels. D.W.13 says that at that juncture the 1st accused left him behind and went forward a few

steps

steps and then bawled out that he was beaten, that he then he rattling sound of sticks and ran towards the 1st accused, t time he heard also the sound of a gun-fire; and that when he close to 1st accused, he saw Peer Sab(P.W.1) lying on bleeding from his left thigh, and also a gun broken into 3 pieces(No.1) and lying by his side. He firther says that he also obse there 3 or 4 sticks, a gunny bag containing mangoes, and some mangoes scattered on the ground. D.W19 also says that he heard the sound of the rattling of sticks and sound of gun-fire when he was in the voni on the Western side of the garden, and that he ran to that plac and saw Peer Sab (P.W.1) lying with a bleeding wound on one of his thighs. He also speaks of having observed on the ground there a bag contai ing mangoes, 3 or 4 sticks, and a gun broken into 3 pieces and some mangoes scattered on ground.

33. D.W.13 and 19 then proceed to state that they and th accused went towards the village to give information to the Inspect and that when they walked 1/2 or 3/4 furlong, they saw the I came towards them, and that they came back to the garden with Inspector to whom they narrated the story relating to the various serious events which had just then happened. Sub Inspector (Hilka Rao) is also said to have then been coming along with the Inspecto (Bhujanga Rao).

34. The Inspector and the Sub Inspector are examined as D.W. 5 and 10 respectively. They and D.W.13 and 19 speak about what they did after coming to the garden. Their evidence shows that they came with some residents of Purigali to make a mahazir and w they commenced to write out a mahazir after inspecting the place occurrence and the garden, a shower of stones pelted in the dark (t being new moon day) came whizzing on them and injured a few Constable and threatened them all with serious danger, and so they all left the place to Purigali village to pass the night safely there. D.W.4 states that he one of those who had been taken from Purigali that night

night to write out mahazir. He says that he wrote a mahazir there, that as Inspector and Hamzah Police ran away, he and others also ran away. He adds that he does not know the reason for the Inspector running away. He does not speak of pelting of stones at all. His evidence throws good deal of doubt on the evidence of D.W.8,10,13 and 19 on this point. However, it is clear that nothing more was done that night except inspection of the place of occurrence and the garden. The Inspector and the Sub Inspector also state that they found in the voni on the Western side of the garden, a broken gun, a few sticks, a gunny-bag containing mangoes, and that in the garden they noticed only burnt patches of ground and mango fruits lying scattered ally over the garden. It is clear from their evidence and that of D.W.13 and 19 that Peer Sab was not to be found there when the Inspector and the Sub Inspector came to the spot and that they left the place leaving the gun and other articles at the place they were observed.

25. According to the evidence of those witnesses, next morning was spent in collecting men from surrounding villages, as the residents of Purigali refused to attend, and a mahazir was completed at the spot by about 2 or 3 P.M. D.W.8 and 18 were among those who were present when the mahazir was written out on 28-4-1920. D.W.8 says that in the voni to the west of the garden were lying a broken gun, a lantern, 4 or 5 sticks, and a bag containing mangoes. But he adds that the 1st accused and Constables brought 3 more bags of mangoes and placed them there. D.W.18 speaks in conformity with what D.W.8 has said. He also admits that 1 or 2 bags of mangoes were then brought and placed in the voni. His evidence makes it appear that before the bags were so brought and placed there, there were no bags there containing mangoes.

26. Thus the evidence of D.W.4,8 and 18 reveals that 1st accused's and Police version of the mahazirs, cannot be relied upon, and that the handling by the Police of the case arising from the serious events adverted to, is not free from attempts at concoction.

Coming back to the main point under consideration, it is clear from

that the evidence which has been addduced on behalf of the accused, does not support the plea of accident, in relation to the injury sustained by P.W.1 from the firing of the gun, which was in the hands of the 1st accused at that time. No other conclusion is possible than that 1st accused injured P.W.1 on his thigh by firing his gun voluntarily whatever might have been his motive or intention at the time.

27. It is urged on behalf of the accused No.1, that the plea of accident, was not a new invention, and that it was alleged in his complaint (Ex.D/13) presented by him to the Police Inspector within 1 or 2 hours after the occurrence, in regard to the theft committed by P.W. 1, 14 and 15 and a large number of others, of the crop of the garden in dispute. But as pointed out by the learned counsel for the complainant it seems to me that it was unlikely that a complaint like Ex.D/13 containing so many facts and so many accused persons, could have been so neatly and closely written up by the 1st accused himself who had undergone the excitement of events which according to him, endangered his own life, but undoubtedly endangered the life of the complainant (P[illegible]) and the risk involved in the same being attributed to the act of himself and thereby exposing him to the further danger of criminal prosecution. It is clear from the evidence of the Police Inspector and Sub Inspector that they could not have left the vicinity of the garden before, one mid-night, for he says that he received information of the presence of a large number of persons in the garden from 1st accused at 11 P.M. and that he sent him back with some Constables and started 1/2 an hour afterwards, walked 2 or 3 furlongs to reach the garden, inspected the garden and its surroundings, got panchayatdars to write out mahazir, and returned to Puri[illegible] after he was thwarted in his attempt to have a mahazir drawn up. All these items of business could not have taken up less than 1½ hours. The 1st accused must have commenced writing out the complaint after going back to the village, for it was not possible even to write out mahazir near the garden. So the statement that the 1st accused presented his complaint to the Police Inspector within 1½ hours, after the occurrence, must be accepted with a broad margin, for

even

even after going back to the village, 1st accused is said to have had some turmoil, for he received there the news that his house was attacked by some of the accused. In fact in his complaint Ex.P/1? which bears the date of 28th of April 1922, the figure 28 appears in different ink. I think that there must have been ample time -- between the occurrence and the presentation of the complaint, to reflect and invent a plea in respect of the firing of the gun. So much weight cannot be attached to the fact that the plea that the firing of the gun was due to a circumstance independant of 1st accused's will and act, is alleged in that complaint. If the 1st accused had been caught hold of and roughly handled and a blow was given to his gun with a stick, as pleaded, the persons who had accompanied to the garden would certainly have noticed it. At least D.W. 13(Constable Linga) who was only a few yards from him would have --- noticed it. The Constable Imam Khan and Boriah and Linga who had gone to the garden with the 1st accused and were present near the garden at the time of the occurrence have not been examined as witnesses. In fact there is no evidence at all on record in proof of the plea of accident.

28. The Inspector and Sub Inspector state that they went to Naripura on 28-4-1922 at about 4 P.M. and saw Peersab(P.W.1)in his house, and that they saw on his fore head and one of his thighs bleeding wounds. It appears from their evidence that they made no attempt to record his statement but gave a yadi addressed to the Sub Assistant Surgeon of T.Narsipura to Mahomed Khasim's brother Chimiah Sabi, who is also called Abdul Rahiman Sab(P.W.18) to enable him to take Peer Sab to the dispensary at that place. Peer Sab (P.W.1) was removed to the dispensary two days afterwards, and there his statement was taken by the Amildar of the place on 3-5-1922. That statement is Ex.D/30. The allegations in it corroborate the evidence given by him before court. He preferred a complaint in this court on 22-6-1922 i.e. about 10 days after he was discharged from the hospital.

29. The indefference with which the Police Inspector and the Sub-Inspetor treated the serious injuries which Peer Sab had sustained

sustained ,is not commendable. Neither of them ascertained how he was faring in the dispensary. They did not try to ascertain how his injuries had been caused,or take any notice of his statement(Ex.D/3) recorded by the Amildar. They simply relied on the one sided and un-corroborated version of the 1st accused that P.W.1(Peer Sab) was accidentally shot while he was engaged in the act of carrying away mangoes stolen from the garden in dispute. They did not consider it worth recording or considering the statement of P.W.1 in this matter. If they had listened to P.W.1 and considered his version of the case and the evidence,he was able to adduce,and if after doing so they were not satisfied with the truth of his complaint or were satisfied with the accused's plea of accident or justification, and then dropped the matter,or further action,there would not have been much scope to adversely comment on the conduct of the Police. But they ignored his fate altogether,and engrossed themselves solely in working up a case against him,his master and the latter's friends, relatives and followers. The case which they launched against them in this court for rioting and theft of the garden crop and causing hurt to 1st accused,collapsed,and it has this day been disposed of

30. I think that on considering all the circumstances,the plea of accidental firing of the gun as due to a stroke given to it with a club by one of complainant's own party,has not been established.It appears to me that 1st accused fired the gun at P.W.1 in order to strike terror into the minds of that person and of the other servants of his master,so that they might with-draw from the resistence they were successfully offering to the attempt of 1st accused to take possession of the garden under reference. He has pleaded that he was also beaten by P.W.1 and his companions. He has examined the Sub Assistant Surgeon of Malavalli as D.W.17 to prove that 1st accused had some injuries on his body. The evidence of D.W.17 shows that 1st accused when examined on 29-4-1922 by him,had a contusion on his right fore-arm,another on right thigh and a 3rd injury on his left hand -ring and little fingers. It is not proved that those injuries were sustained by 1st accused at or about the time when P.W.1 received

received the gun shot wound. He has not adduced any evidence to show how or when he sustained those injuries. He has not proved that any body hit his gun with a club. So these injuries in the absence of other evidence, do not prove any circumstance which would have justified, 1st accused in shooting P.W.1 in defence of his person. In fact the 1st accused does not plead that any circumstance cropped up ---- which justified the use of his gun in defence of his person. I have already given my reasons for holding that the 1st accused could not have been acting in defence of his property, for he had no grounds to bonafide believe that he had right to the garden in dispute. I come to the conclusion that 1st accused did fire the gun. But I cannot say that he did so with the intention of causing grievous or simple hurt to P.W.1 of any others. I do not think that 1st accused who is a shrewd man, risked so much. His object in firing the gun was as already observed, to scare away all resistence to his entering the garden and taking its crop. But whatever his object in pursuance in doing that act, he did a rash and negligent act which endangered the personal safety of others.

31. On behalf of the accused some stress was laid on the delay with which the complainnat came to court for redress, as supporting the theory of the plea of accident or justification or both confirmed, and the suggestion was made that the complaint was the result of an after thought. It is conceded that P.W.1 was badly wounded on head and thigh, and that he was removed to his village at Naripura from the place where he received the injury. It is not denied that P.W.1 was unable to speak on the next day when the Police Inspector and Sub Inspector visited him in his house. They admittedly found him in such a state that his removal to dispensary for treatment was necessary. The medical evidence shows that the patient was alternately sinking and reviving under stimulants. So none could suggest that he was in a position to complain to any one or got it done by others. It is urged that his relations or those interested in him, would have taken such action, if his injury was due to an act or acts of 1st accused or others done under circumstances which rendered

rendered them criminally liable and that their omission to take any action, suggests the contrary. But it must not be lost sight of that the appearance of the Police Inspector and Sub Inspector at the house of P.W.1 on the date after the occurrence, the advice given by them to remove him to hospital, must have led his relations and others interested in him, to believe that they would make an enquiry into circumstances of his case. The fact that his statement was taken by the Amildar must have strengthened that belief. The Police were investigating the case about the events which happened at the place where P.W.1 was injured. There was no reason for his relations to think till the final stage of investgation was reached, that the enquiry would be all one sided, made with a view to construct a case against P.W.1 himself and such others as were taking partin disputing the 1st accused's title to the garden and resisting his efforts to take possession of it. No doubt charge sheet had been placed against them all while P.W.1 was still an in-patient in the dispensary. P.W.1 must have come to know all this after he was discharged from it. If afterwards he took 8 or 10 days for reflection and consultation in respect of prefering a complaint to this court, the period cannot be counted against him as giving rise to a suspicion about the truth of the complaint, he had already given to the Amildar. As for his master Abdul Subhan and the latter's father-in-law Mahomed Khasim they had been hauled up as accused in cases (Nos. 215, 217 and 196 of 1921-22) which the Police launched as the result of their investigation in respect of events which happened on 27-4-1922 near the garden. During the investigation of those cases endeavour on the part of the Police was not wanting to arrest them. The evidence of P.W.15 shows that he suspected that the Police were working in the wrong way in the investigation, with a view to help the 1st accused and with a prejudice against him and his party, as they had already arrested some of the servants, that he therefore went to Mysore with the object of presenting a petition to the Deputy Commissioner in the matter, but was arrested near that office at the personal direction of the Superintendent of French Rocks and in his presence. The

person

The person who arrested him was R.Subba Rao(D.W.6) who was then Head Quarter Inspector, managing the office of the District Superintendent of Police of Mysore. He concedes that he arrested Abdul Subhan on 8-5-1922 near Deputy Commissioner's Court Hall in Mysore City, as per instructions of the District Superintendent of Police of French Rocks who had come here at the time, and that he searched his person, seized papers found with him and handed him and the papers over to Abdul Rub, Head Constable of Chamarajpet Station in Mysore, to be detained in his station and sent him over to French Rocks Police Station. The record shows that he was detained in custody for 14 days, and that after he was placed before court with the charge sheet, he was released on bail by the Sessions Judge. In this circumstance nothing can be said about the merits of this case, if he did not come forward with a complaint to Police or to court on behalf of his servant, Peer Sab (PW.1). He had been driven to the necessity of defensive action and avoid himself being arrested as long as possible. Mahomed Khasim was probably under similar predicament and had come away to Mysore on the plea that his wife required Medical treatment here in the house of a Hakim. But he did send a complaint(Ex.P/2) in the matter by post to the District Superintendent of Police, French Rocks. If he did not approach the Police in person owing to fear arising from the various arrests they were making of persons belonging to his party, that fact cannot be considered to be a circumstance telling on the merits of this case.

32. On bestowing my best attention on the entire evidence of this complicated case, it appears to me that the 1st accused fired the gun at P.W.1 who was a servant appointed by Abdul Subhan and his father-in-law, Mahomed Khasim, to watch the garden in question on their behalf. It is very difficult to fix the precise time of that act or the exact circumstances under which that act was done, viz. whether the act was done in the evening in the presence of the Police Jamedar, Lingaraj Urs when P.W.1 was guarding the village gate according to his master's order, and resisted the efforts of 1st accused and his servants to force their way through the gate into the garden in order to cut and

remove

remove its fruits,as stated by him(P.W.1) and other witnesses for the prosecution, or whether as per 1st accused's and Police version it was done at night when P.W.1 and his masters Abdul Subhan and Mahomed Khasim and his other servants were coming out of the garden with the mangoes cut by them,and were surprised by 1st accused and his servants and Police Conetables whose aid he(1st accused) had secured from the Police Inspector. The former version seems to be more probable, though I am not prepared to say that the Jamedar Lingaraj Urs was Had present at the time. The occurrence took place probably after he left the garden vicinity to Boppegowdanapura with the 3 servants of Abdul Subhan,whom he had arrested. It seems to me probable that Abdul Subhan and Mahomed Khasim and his followers attempted to cut and remove mango crop of the extensive garden of about 5½ acres in extent and which contain 184 mango trees,at dead of night on a New Moon day with the aid of lanterns and torches and light made by --- setting fire to collections of dried leaves. That was not at all the convenient time to cut mango crop. Further the previous history of the dispute between Abdul Subhan and 1st accused in respect of the garden,reveals that the ~~latter~~ former made no secret of his determination and endeavour to retain possession of the garden and to prevent with force the removal of its crop by others. Even the incidents which had taken place in the morning and in the noon on the date of occurrence,which form the subject matter of cases in C.C.No. 815 and 817 of 1921-22 against them,discloses the same disposition on ~~their~~ Lei & Mahomed Khasim part. The record does not show that they were ever inclined to adopt --- stealthy measures to carry out their object. They do not seem to have been wanting ~~in~~ in men or courage to openly cut and remove the crop. It seems to me that it is such a deed which gave rise to the conflict under reference on 27-4-1922,in the evening or night, whichever it be. The 1st accused seems to have become emboldened by the frequent Police help he secured in his various previous endeavours, and did the hazardous and in-discreet act of trying to drive away Abdul Subhan's men by firing his loaded gun, When that act was done, and P.W.1 fell wounded and bleeding,he appears to have begun to think of and fear the consequences.which might ensue to him especially if

the wounded died of the effect of his wounds. I am not prepared to attach much value to the evidence adduced to prove the infructious attempt at drawing up a mahazir. The mahazir transactions have ---- gathered around them,circumstances of great suspicion. The attempt at supplementing things which were found near the garden on inspection as testified to by P.W.8 and 18 who are by no means interested in the complainant(P.W.1) or P.W.15 and 16, is enough to rouse that suspicion My own view is that 1st accused was shot in the evening at about the time of Sun-set after Jamedar Lingaraj Urs left the place.

33. As already observed,the evidence on record warrants the conclusion that 1st accused fired the gun voluntarily in order to scare away the men belonging to the party of Abdul Subhan and Mahomed Khasim by ~~striking~~ striken terror into them. It is doubtful if aimed it at P.W.1. Nevertheless he knew that there were men all round,and --- there was reason for him to know that by firing the gun he was endangering the safety of others. Reckless of that consequence,he did the act. I think therefore that it was a negligent and rash act, which ended in causing grievous hurt to P.W.1. The circumstances of the case and the evidence on record, does not warrant the conclusion, that the 1st accused did that act with the intention of causing grievous hurt to P.W.1. His act therefore comes under the operation of section 338 I.P.C. and not under section 326 I.P.C.. Though the 1st accused is charged for the latter offence,I am of opinion that I may convict him in virtue of Section 237 of Cr.P.C. for offence under the former section viz.338 I.P.C. I therefore do so.

34. As for the 3rd accused,there is no evidence to connect him with the offence committed by the 1st accused,either on the ground of his being joint perpetrator ~~tion~~ of the act under section 34 I.P.C.,or as an abettor of the offence. Though he knew that he was co-operating with the 1st accused who held a loaded gun in his hand to drive away or catch those who were removing the crop in the garden,there is no reason to say that he know that he meant to fire the gun. He was a servant employed by the 1st accused ~~as his servant~~ to watch the garden and obey his order. He is ~~xix~~ said to have only dragged P.W.1. That

act

act does not ~~apply~~ imply that he foresaw how accused numbers 1 and 2 behave towards him. It is not possible to say that he is --- jointly liable for the deed of accused numbers 1 and 2, for unless it is proved that he acted with them with the common intention, section 34 of I.P.C. does not apply. I therefore hold that he (3rd accused Medini Malla) is guilty of only offence under section 352 I.P.C., and I convict him of that offence.

35. As regards the sentence, I think that as the 1st accused did not voluntarily caused grievous hurt to P.W.1 and that he is only responsible for it owing to his rash and negligent act, serious --- punishment is not necessary. I sentence him to suffer simple imprisonment for three months and to pay a fine of Rs.300/-(three hundred) and on default to suffer simple imprisonment for three months. 3rd accused is sentenced to pay a fine of Rs.60/- and on default to suffer simple imprisonment for two months.

Pronounced in open court,

Sd/- S.Krishna Rao,

Special 1st Class Magistrate,
31st March 1924.

Copy

S. Krishna Rao

Special I Class Magistrate,
Mysore

A.P.

Criminal Case No. 218 of 1921-22.

The following witnesses were examined for the prosecution:-

1. Peer Sabi 2.Abdul Wazid 3. Hanuma 4. Nanje Gowda 5.Kempasetty 6. Dodda Nanja 7. Mahomed Sab 8. Thele Mada 9. Parva 10. Dindi Nanja 11. Karim Sabi 12. Sannamadappa 13. Ala alias Chikka 14. Ammanullakhan 15. Abdul Subhan 16. Mahomed Khasim 17. Lakshminarnappa 18. Abdul Rahimon alias Chinnaiah 19. Mr.R.Thirumal Rao and 20. Venkata Narsiah

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For Defence:-

1. Patel Chennabasaviah 2. Naridevaru 3. Mallegowda 4. Madappa bin Guru Mallaiya 5. Mr.P.Bhujanga Rao,Head Quarter Inspector,Tumkur. 6. Mr.H.Subba Rao,Police Inspector,Chitaldroog 7. Lingaraj Urs,Police Sub Inspector,Nelligere. 8 Madappa 9. Mallikarjunappa 10. Neelakant Rao,Sub Inspector,Malvalli 11. Nanja 12. Srinivasa Murthi 13. Ninga Police Constable 14. Sidda,Police Constable 15. S.L.Narayan Rao,16. Seshagiri Rao 17. Mr.E.C.Wesley,Sub Assistant Surgeon 18. P.Krishnacha 19. Mada.

List of Exhibits filed in support for prosecution:-

Art.No.1 A broken gun with its parts

Art.No.2 A dupati

Art.No.3. A panchey

The following exhibits were filed for the prosecution:-

Ex.P/1. Gutta chit dated 26-2-1920 executed by Venkatanarsiah in favor of Amanulla Khan.

Ex.P/2. Registered mortgage deed dated 21-1-21 executed by Venkata Narsiah in favor of Abdul Subhan.

Ex.P/3. Un-registered mortgaged deed dated 10-6-1920 executed by Venkata Narsiah in favor of Abdul Subhan.

Ex.P/4. Petition dated 29-4-21 presented by Abdul Subhan Sab to the Ex-officio 1st class Magistrate,French Rocks.

Ex.P/5. Vakalat given by Abdul Subhan to Mr.M.K.Krishna Rao,Pleader.

Ex.P/6. Receipt dated 27-1-1921 given by Shanbhogue Lakshminappa to Abdul Subhan for payment of assessment to Khate No. 36 of the Purigali village.

Mahomed Khasim

Ex.P/7. Receipt dated 13-2-1922 by ditto- ditto-to ~~xxxxxxxxxxxx~~ for payment of assessment to Khate No.36 of the Purigali village.

Ex.P/8 Yadi No.4 dated 28-4-22 from the Police Inspector,Malavalli,to th Sub Assistant Surgeon, T.Narsipur.

Ex.P/9. Counter-foil of medical certificate No.8 dated 16-5-22 granted by the Sub Assistant Surgeon,Malvalli,to Peer Sab

~~Ex.R/9.~~

Ex.P/9a. Copy of District Medical Officer's remarks dated 21-5-22 on t back of ~~Ex.R/9.~~ P/9.

Ex.P/10. Copies of hypothecation deed dated 22-11-1897 and sale deed dated 6-7-1902 executed by Narasamm,Rangappa and Puttu Rao in ~~favr~~ favor of Venkatanarsiah.

Ex.P/11. Endorsement No.47/9-8-22 by the District Magistrate,Mysore,to Mr. Vemkatapathiah,counsel for Venkata Narasiah.

Ex.P/12. Copy of registered sale deed dated 6-7-1902 executed by Venkat Narsiah alias Puttu Rao and his brother Rangappa,in favor of Venkata Narsiah.

Ex.P/13. Copy of registered hypothecation deed dated 22-11-1897 executed by Narsamma,Venkata Narsiah alias Puttu Rao and Rangappa in favor of Venkata Narsiah.

Ex.P/14. Letter without date written by Rangappa to Venkatanarsiah re- the garden in dispute.

Ex.P/15. Letter dated nil written by Rangappa to Venkat Narsiah.

Ex.P/16. Letter dated 22-2-1912 by -ditto- ditto.

Ex.P/17. Letter dated 13-7-1897 by -ditto- ditto.

Ex.P/18. Telegram dated 23-5-21 by Venkata Narsiah to the Sub Division Officer,F.Rocks,praying for adjournmentt

Ex.P/19. Petition dated 10-8-1921 by Venkat ~~Narsiah~~ Narsima Char,1st party in Crl.Mis.Case.No.14/20-21,on the file of Ex.Officio Class Magistrate's court,French Rocks.

Ex.P/20. Order sheet in Crl.Mis.No.14/20-21 on the file of- ditto-ditto

Ex.P/21. Petition dated 30-4-22 by Md.Khasim Sab to the D.S.P.F.Rocks.

Ex.P/22. F.I.R. received in C.C.No.215/21-22 on the file of the Special 1st Class Magistrate,Mysore.

Ex.P/23. Ditto- ditto- in C.C.No.217 / 21-22 ditto-ditto,

The following exhibits were filed for the Defence:-

Ex.D/1. Written statement presented on 23-12-1920 by the 2nd party Venkata Narsiah and others in C.C.No.51/20-21 on the file of the Special 1st Class Magistrate's court,Mysore.

Ex.D/2. Statement dated 10-4-22 given by Md.Khasim,son of Abdul Khader, before the Police Jamedar,Rottekatte Range.

Ex.D/3. Statement given by Peer Sab on 5-4-22 before the Amildar Magistrate of T.Narsipur Taluk.

Ex.D/4. Receipt for payment as assessment by Rangappa for Khate No.36 of the Purigali village for the year 1908.

Ex.D/5. Receipt for payment of assessment by Rangappa of Khate No.36 of Purigali village,for the year 1907.

Ex.D/6. Ditto - ditto - for the year 1909.

Ex.D/7. Ditto - ditto - for the yaer 1910.

Ex.D/8. Registered mortgage deed dated 5-7-1916 by Narsamma and Achamma in favor of Madappa.

Ex.D8(a) Shara on Ex.D/8.

Ex.D/8b. Shara on Ex.D/8,by Seshagiriya Rao,and signed by Narsamma and Achamma,by impressing their left thumb marks.

Ex.D/9. Gift-deed dated 10-12-1915 executed by Rangappa in favor of - Narsamma and Achamma.

Ex.D/10. Registered sale deed dated 22-2-1917 executed by Narsamma and Achamma in favor of S.L.Narayan Rao.

Ex.D/11. Certified copy of the deposition of Chennabasaviah in Crl.Case No. 224/19-20 on the file of the Special 2nd Class Magistrate,Mandya.

Ex.D/12. Report dated 27-4-22 by the Police Jamedar,Rottikatte Range,to the Police Inspector,Malavalli.

Ex.D/13. Complaint petition dated 28-4-22 presented by Venkat.Narasimha Char,to the Police Inspector,Malavalli Taluk.

Ex.D/14. Final order dated 27-12-21 passed by the 1st Class Magistrate,F. Rocks in Mis. Case.No.14/20-21 declaring that the 1st party Venkati Narsimha Char,was entitled to retain possession of the garden in dispute,until ousted by due course of Law.

Ex.D/15. Order dated 27-12-21,from the 1st class Magistrate,F.Rocks, to the Amildar of Malavalli Taluk to the effect that Venkat Narasimha Char,1st party was entitled to retain possession of the garden in dispute and that the original order of attachment had been cancelled.

Ex.D/16. Acknowledgment dated 12-2-22 by Venkat Narasimha Char having taken possession of the garden in dispute.

Ex.D/17. Petition dated 13-2-22 by Venkat Narasimha Char to the Police Jamedar,Rottekatte Range.

Ex.D/18. Khirdi register of Purigali village for the year 1906-07.

Ex.D/19(a) Entry against Khate No.36 in Ex.D/18.

Ex.D/19. Khirdi register of the Purigali village for 1907-08.

Ex.D/20. - Ditto - ditto- for 1909-10.

Ex.D/20(a) Entry against khate No.36 in Ex.D/20.

Ex.D/21. Khirdi register of Purigali village for 1910-11.

Ex.D/21(a) Entry against khate No.36 in Ex.D/21.

Ex.D/22. Khirdi of the Purigali village for 1912-13.

Ex.D/23. -Ditto- ditto- for 1913-14.

Ex.D/23(a) Entry against khate No.36 in Ex.D/23.

Ex.D/24. Khirdi register of Purigalin village for the year 1914-15.

Ex.D/25. Ditto - ditto- for 1915-16.

Ex.D/26. Ditto - ditto- for 1916-17.

Ex.D/27. Ditto - ditto- for 1917-18.

Ex.D/28. Ditto - ditto- for 1918-19.

Ex.D/29. Agreement dated 12-2-1920 my Medini Malla and his wife to Venkata Narasimha Char,agreein to watch the garden in dispu

Ex.D/30. Stamped receipt dated 20-2-20 for Rs.800/- given by P Krishna Char to Venkata Narasimha Char.

Ex.D/31. Registered mortgaged deed dated 5-10-16 executed by Narasamma and Achamma in favor of S.L.Narayan Rao.

Ex.D/32. Registered sale deed dated 20-10-19 executed by S.L.Narayan Rao,in favor of P.Krishna Char.

Ex.D/33. Receipt garnted to S.L.Narayan Rao by Narasamma and Achamma on 24-10-16 for Rs.300/-

Ex.D/34. Registered sale deed dated 3-11-19 executed by P.Krishna Char in favor of Venkata Narasimha Char.

Ex.D/35. Ditto - ditto- dated 12-2- 20 ditto -ditto.

Ex.D/36. Copy of registered of hypothecation deed dated 12-11-08 executed by Achamma and Rangappa in favor of Rangasami Iyengar.

Ex.D/37. Receipt granted on 29-4-1917 to S.L.Narayan Rao by Syed Esuff Sab for Rs.300/-

Ex.D/38. Lease deed on plain paper executed on 14-4-1918 by Abdul Khadar Sab in favor of S.L.Narayan Rao.

Ex.D/39. Letter without date written by Purigali Rangappa to S.L. Narayan Rao.

Ex.D40. Letter dated 7-10-1919 written by S.L.Narayan Rao to Purigali Malla and Miniyamma,asking them to watch the Mango garden in dispute etc.

Ex.D/41. Letter dated 28-7-1919 written by Shamanna to S.L.Narain Rao.